Filed 2/6/18 Bryan v. News Corp. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

JOHN BRYAN, Plaintiff and Respondent, v. NEWS CORPORATION et al., Defendants and Appellants.	B275567 (Los Angeles County Super. Ct. No. BC596705)

APPEAL from an order of the Superior Court of Los Angeles County, Marc R. Marmaro, Judge. Affirmed in part and reversed in part with directions.

Davis Wright Tremaine, Alonzo Wickers IV, Nicolas A. Jampol, and Diana Palacios for Defendants and Appellants.

Affeld Grivakes and Christopher Grivakes for Plaintiff and Respondent.

INTRODUCTION

On October 8, 1995, the now-defunct British tabloid, News of the World, published an article accusing plaintiff John Bryan of criminal conduct. Bryan, who gained notoriety in the early 1990's because of his relationship with Sarah Ferguson, the Duchess of York, did not file suit. Nineteen years later, on November 12, 2014, the BBC current affairs television program *Panorama* aired an exposé of some of the deceitful and illegal tactics used by News of the World reporters, especially defendant Mazher Mahmood. Bryan's story was included as an example of News of the World's unscrupulous tactics. During Bryan's segment on the show, the headline from the 1995 article appeared on screen.

On October 1, 2015, Bryan filed this lawsuit against News of the World's publisher, defendant News Group Newspapers Limited, its parent corporations, defendants News Corporation and News Corp UK & Ireland Limited, and Mahmood, alleging causes of action for libel, invasion of privacy, illegal recording in violation of Penal Code sections 632 and 637.2 (§§ 632 & 637.2), and intentional interference with prospective economic advantage.

Defendants filed anti-SLAPP motions (Strategic Lawsuit Against Public Participation; Code Civ. Proc., § 425.16 (§ 426.16)). The trial court denied the motions, and this appeal followed. We conclude the statute of limitations bars Bryan's libel, invasion of privacy and intentional interference with prospective economic advantage causes of action. Accordingly, the trial court's order denying the motion as to these causes of action is reversed. The trial court's order is affirmed as to

Bryan's cause of action for illegal recording against News Group Newspapers Limited and Mahmood, but reversed as to defendants News Corporation and News Corp UK & Ireland Limited because Bryan failed to establish a probability of prevailing against the parent corporations.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The 1992 Photograph of Bryan with the Duchess of York*

In August 1992, Bryan "became the unwilling subject of tabloid headlines after being photographed in Saint Tropez with a topless Duchess of York," Sarah Ferguson, "during a family holiday, after her separation from Prince Andrew." Bryan had his mouth on her foot in the photograph.

B. *The 1995 News of the World Story*

In 1995, Bryan was living in Los Angeles. He was no longer involved with Ferguson. He was pursuing a number of business ventures, including a hotel project in Las Vegas.

In September of 1995, Bryan received a telephone call from Ali Malik,[1] who said "that he was a London-based solicitor representing a Saudi billionaire, Sheikh Mahmud Al-Karim, who wanted to make investments in the" United States. Bryan described his Las Vegas hotel project. Malik said it was the type of project in which the sheikh was interested and asked for additional information. After further correspondence, Bryan

---

[1] Malik was named as a defendant but is not a party to this appeal.

agreed to meet with the sheikh in Los Angeles to finalize the deal.

In early October, Bryan met with Malik and the sheikh, who was actually defendant Mahmood posing as the sheikh, and Steve Grayson, another reporter who was pretending to be a member of the shiekh's entourage. They met at the Beverly Hilton hotel and had dinner at Drai's restaurant. Afterwards, Bryan met with Grayson at the hotel. Grayson asked Bryan to procure cocaine and prostitutes for Malik and the sheikh. Bryan refused.

Bryan believed his conversations with Malik, Mahmood, and Grayson were private. He had no reason to believe he was being recorded.

On October 8, 1995, News of the World published an issue with the headline: *Fergie's Ex in Vice and Drugs Shame*. The story, by Mahmood, stated on the front page that "Bryan arranged two hookers to 'sweeten' a sordid business deal" and "also offered cocaine in a bid to snare rich investors." The story stated that Bryan "did not realise his 'investors' were News of the World reporters."

Inside the newspaper, the story included statements attributed to Bryan regarding his cocaine use, experience with prostitutes, sexual experiences with Ferguson, and "lust" for Princess Diana. It also included photographs of, and interviews with, two prostitutes who claimed Bryan procured their services for the sheikh.

C. *News of the World's Tactics Lead to Its Demise*

After the 1995 story, News of the World and The Sun became involved in a phone hacking scandal that led to a

government inquiry into tactics used by the British press (The Right Honourable Lord Justice Leveson, *An Inquiry into the Culture, Practices and Ethics of the Press* (Nov. 2012)), numerous arrests and convictions, and testimony before Parliament by Rupert and James Murdoch.

The scandal also led to the demise of News of the World, which ceased publication on July 10, 2011. News Corporation "[a]pologized to victims of voicemail interception" and attempted to settle civil claims brought against it. Rupert Murdoch issued an apology "for the serious wrongdoing that occurred" and the "hurt suffered by the individuals affected."

As part of the government inquiry, journalists from News of the World appeared before an investigatory panel "seeking to explain and justify their undercover methods to investigate stories . . . . [¶] Former News of the World Reporter Mazher Mahmood told of undercover and sometimes illegal methods, such as buying child pornography to uncover pedophiles. Among successful disguises was his role as an Arab sheik duping Sarah Ferguson, the divorced wife of Prince Andrew, into accepting a hefty bribe for introducing him to high-profile contacts as part of a fake oil deal." (Los Angeles Times, News from Around the World (Dec. 12, 2011).)

D. *The 2014 Panorama Exposé*

On October 4, 2014, Bryan met with Grayson during the taping of the BBC's *Panorama* program, *The Fake Sheikh Exposed*, which chronicled some of Mahmood's tactics. This was Bryan's first contact with Grayson since 1995. During the taping of the show, Grayson revealed to Bryan that he had secretly

recorded their conversations during their meetings in Los Angeles in 1995.

Both Bryan and Grayson appeared on the program. Bryan denied the allegations contained in the 1995 News of the World article that he had offered to provide the sheikh with cocaine and prostitutes. Grayson corroborated Bryan's denials and confirmed that when he tried to get Bryan to supply them with prostitutes and cocaine, Bryan refused. Grayson explained that Mahmood arranged on his own for two prostitutes to come to Mahmood's hotel suite and record them saying "Johnny [Bryan]" sent them. Mahmood used the false statements to support his story about Bryan in the tabloid. During the *Panorama* program, the front page of the October 8, 1995 issue of News of the World was shown on the screen for roughly three seconds.

The following day, Bryan sent "News UK" a letter demanding that, in light of the revelations in the *Panorama* program, News UK publish a retraction admitting the 1995 News of the World story was false. Bryan received no response.[2]

E. *Bryan's Lawsuit*

On October 1, 2015, Bryan filed this lawsuit, alleging causes of action for (1) libel, (2) invasion of privacy, (3) illegal

---

[2] Subsequent to the BBC program, the Crown Prosecution Service announced that it was re-examining convictions in 25 cases "over concerns about evidence provided by the undercover Sun on Sunday reporter Mazher Mahmood." Mahmood was suspended by the Sun while it investigated the matter. (The Guardian, *Fake sheikh Mazher Mahmood cases to be reviewed by CPS* (Dec. 4, 2014).)

recording in violation of sections 632 and 637.2, and (4) intentional interference with prospective economic advantage. Defendants filed answers denying the allegations of the complaint and asserting a number of affirmative defenses, including the expiration of the applicable statutes of limitations.

F. *The Anti-SLAPP Motions and the Trial Court's Ruling*

Defendants then filed anti-SLAPP motions claiming that Bryan could not show a probability of prevailing because all of the causes of action were barred by the applicable statutes of limitations and challenged Bryan's allegation that News Corporation and News Corp UK & Ireland Limited acted as the alter ego[3] of News Group Newspapers Limited.

The trial court found the first two causes of action for libel and invasion of privacy were "subject to the anti-SLAPP statute because they are premised primarily on the publication of the [1995 News of the World story], which [is] conduct protected by the First Amendment." (Fn. omitted.) The court found the third and fourth causes of action for illegal recording and intentional interference with prospective economic advantage were not subject to the anti-SLAPP statute because they are premised on the illegal recording of Bryan's conversation and because the defendants' "conduct—attempting to 'entrap' [Bryan] into engaging in illegal conduct and surreptitiously recording

---

[3] Bryan alleged generally that all defendants were agents of one another. News Corporation and News Corp UK & Ireland Limited based their anti-SLAPP motion on an alter ego theory. The trial court, in ruling on the motion, discussed both agency and alter ego principles.

[Bryan's] responses to private conversations—does not come within the ambit of the First Amendment." Nonetheless, the trial court proceeded to consider all four causes of action under the second prong of the anti-SLAPP analysis and found Bryan carried his burden of showing a probability of prevailing. Finding Bryan also demonstrated a probability of prevailing against News Corporation and News Corp UK & Ireland Limited on an alter-ego/principal-agent theory, the trial court denied the anti-SLAPP motion in its entirety.

DISCUSSION

A. *Standard of Review*

"The anti-SLAPP statute does not insulate defendants from *any* liability for claims arising from the protected rights of petition or speech. It only provides a procedure for weeding out, at an early stage, *meritless* claims arising from protected activity. Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. [Citation.] If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384.)

At the first step, in determining "whether the 'arising from' requirement is met, a court considers 'the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.' [Citation.]" (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79; accord, *Contreras v. Dowling* (2016) 5 Cal.App.5th 394, 408.) "Thus, the court is not limited to

examining the allegations of the complaint alone but rather considers the pleadings and the factual material submitted in connection with the special motion to strike. [Citations.]" (*Contreras*, *supra*, at p. 408.)

The second step involves "a 'summary-judgment-like procedure,'" in which "[t]he court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law. [Citation.]" (*Baral v. Schnitt*, *supra*, 1 Cal.5th at pp. 384-385.) The court should grant the ant-SLAPP motion "'"if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim."' [Citations.]" (*Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240, 1251; see also *Zamos v. Stroud* (2004) 32 Cal.4th 958, 965.)

On appeal, we "'apply[] the same two-step procedure as the trial court. [Citation.] We look at the pleadings and declarations, accepting as true the evidence that favors the plaintiff and evaluating the defendant's evidence "'only to determine if it has defeated that submitted by the plaintiff as a matter of law.' [Citation.]" [Citation.] The plaintiff's cause of action needs to have only "'minimal merit' [citation]" to survive an anti-SLAPP motion. [Citation.]' [Citation.]" (*Kenne v. Stennis* (2014) 230 Cal.App.4th 953, 963; accord, *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 820.)

"An appellate court reviews an order denying an anti-SLAPP motion under the de novo standard of review." (*Gerbosi v.*

Gaims, Weil, West & Epstein, LLP (2011) 193 Cal.App.4th 435, 444; see also *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1067 [review of ruling on anti-SLAPP motion is de novo].)

B. *Step One—Protected Activity*

At step one, we consider "'whether the challenged claims arise from acts in furtherance of the defendants' right of free speech or right of petition under one of the categories set forth in section 425.16, subdivision (e). [Citation.] In doing so, "[w]e examine the *principal thrust* or *gravamen* of a plaintiff's cause of action to determine whether the anti-SLAPP statute applies . . . ." [Citation.]' [Citation.] The 'gravamen is defined by the *acts on which liability is based*, not some philosophical thrust or legal essence of the cause of action.' [Citation.]" (*Contreras v. Dowling*, *supra*, 5 Cal.App.5th at pp. 404-405; accord, *Jackson v. Mayweather*, *supra*, 10 Cal.App.5th at p. 1255 [""'The 'focus is on the principal thrust or gravamen of the causes of action, i.e., *the allegedly wrongful and injury-producing conduct* that provides the foundation for the claims'"'"].) The defendant's burden is to identify the allegations of protected activity and show that the challenged cause of action arises from that protected activity. (*Baral v. Schnitt*, *supra*, 1 Cal.5th at p. 396.)

"'When relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at [the first] stage. If the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached.' [Citation.] However, 'if the allegations of protected activity are only incidental to a cause of action based essentially on nonprotected

activity, the mere mention of the protected activity does not subject the cause of action to an anti-SLAPP motion.' [Citations.]" (*Jackson v. Mayweather*, *supra*, 10 Cal.App.5th at p. 1251; accord, *Kenne v. Stennis*, *supra*, 230 Cal.App.4th at pp. 967-968.)

Properly viewed, Bryan's causes of actions fall into two categories: (1) the publication claims and (2) a recording claim. The publication claims relate to the alleged harm caused by the publication of the 1995 article.[4] These claims include Bryan's first cause of action for libel, second cause of action for false light invasion of privacy,[5] and fourth cause of action for intentional

---

[4] Bryan's first cause of action for libel alleges that defendants "published a defamatory newspaper headline and article which falsely stated that [Bryan] had offered to procure cocaine and prostitutes in order to secure financing for a Las Vegas hotel deal." Bryan's second cause of action for invasion of privacy alleges that his right to privacy was invaded by "the (i) illegal recording of private in-person and telephone conversations between [Bryan] and defendants; and (ii) the republication of a false story about [Bryan] which disclosed private facts about [him] and placed him in a false light." Bryan's third cause of action for illegal recording in violation of sections 632 and 637.2 alleges that defendants illegally recorded his conversations. Bryan's fourth cause of action for intentional interference with prospective economic advantage alleges that defendants used the illegal recordings to support and justify the publication of the false story and defendants published the article with the intent to disrupt Bryan's economic relationship with the investors in the Las Vegas hotel deal.

[5] As we discuss in footnote 14 *post*, Bryan's invasion of privacy cause of action also alleged an intrusion into private

interference with prospective economic advantage.[6] Bryan's third cause of action relates to the illegal recording of his conversations.

---

matters based on the illegal recording. Inasmuch as the gravamen of the cause of action *as pled* is the injury caused by the publication of the article (*Contreras v. Dowling*, *supra*, 5 Cal.App.5th at p. 405 [""[w]e examine the *principal thrust* or *gravamen* of a plaintiff's cause of action to determine whether the anti-SLAPP statute applies""]), not the injury caused by the illegal recording, we consider it with the publication claims.

[6] The trial court determined the fourth cause of action, for intentional interference with economic advantage, was not entitled to protection under the statute because an "important component" of this cause of action "is the allegedly unlawful recording, which is a necessary element of the tort." The court erred in its characterization of the claim. The gravamen of this claim relates to the publication of the article and the injury caused from its publication, not the fact of the illegal recording. (*Contreras v. Dowling*, *supra*, 5 Cal.App.5th at pp. 404-405.) Indeed, Bryan did not allege the illegal recording itself was the wrongful act which interfered with his prospective economic advantage. He alleged that defendants "engaged in wrongful conduct through the *use* of illegal recordings to *support and justify the publication* of the story." (Italics added.) What interfered with his prospective economic advantage was the publication of the article, not the recording of the conversations. Similarly, what caused the harm was the Las Vegas hotel's alleged reaction to the article and their decision to end their business relationship with him. In other words, this cause of action, like the first and second, was "premised primarily on the publication of the news article, which [is] conduct protected by the First Amendment."

1. *The Publication Claims Involve Protected Activity*

The publication of the original 1995 News of the World story constitutes protected activity within the meaning of subdivision (e)(3) of section 425.16: a "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." "[N]ewspapers and magazines are public fora within the meaning of section 425.16, subdivision (e)(3)." (*Nygård, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1038.)

"To come within section 425.16, a statement must not only be made in a 'place open to the public or a public forum,' it must also be made 'in connection with an issue of public interest.' . . . [¶] Section 425.16 does not define 'public interest,' but its preamble states that its provisions 'shall be construed broadly' to safeguard 'the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.' (§ 425.16, subd. (a).)" (*Nygård, Inc. v. Uusi-Kerttula*, *supra*, 159 Cal.App.4th at p. 1039.)

The scope of the "public interest" requirement extends to "'tabloid' issues." (*Nygård, Inc. v. Uusi-Kerttula*, *supra*, 159 Cal.App.4th at p. 1042.) In *Nygård*, the court concluded the legislative history of section 425.16 and the cases interpreting it "suggest that 'an issue of public interest' within the meaning of section 425.16, subdivision (e)(3) is *any issue in which the public is interested.* In other words, the issue need not be 'significant' to be protected by the anti-SLAPP statute—it is enough that it is one in which the public takes an interest. Judged by this standard, the trial court correctly concluded that the statements on which the present suit is based concern an issue of public interest. According to evidence introduced by [the] defendants in

support of their motions to strike, there is 'extensive interest' in Nygård—'a prominent businessman and celebrity of Finnish extraction'—among the Finnish public. Further, [the] defendants' evidence suggests that there is particular interest among the magazine's readership in 'information having to do with Mr. Nygård's famous Bahamas residence which has been the subject of much publicity in Finland.' The June 2005 article was intended to satisfy that interest." (*Ibid.*)

The story in the present case alleges that Bryan, a man who three years earlier had attained a degree of fame or notoriety due to his relationship with a member of the British royal family, was involved in drug dealing and the procurement of prostitutes in connection with a Las Vegas hotel project. His involvement with Ferguson made him an object of public interest due to the public's fascination with the British royal family. For that reason, his alleged involvement in sordid criminal conduct was a matter of public interest as well. The story thus involved an issue of public interest for purposes of section 425.16. (*Nygård, Inc. v. Uusi-Kerttula*, *supra*, 159 Cal.App.4th at p. 1042; see *Jackson v. Mayweather*, *supra*, 10 Cal.App.5th at pp. 1256-1259 [discussing public's interest in lives of celebrities and those whose actions place them in the public eye]; *Hall v. Time Warner, Inc.* (2007) 153 Cal.App.4th 1337, 1347 ["public's fascination with [Marlon] Brando and widespread public interest in his personal life made Brando's decisions concerning the distribution of his assets a public issue or an issue of public interest"].) Accordingly, the publication claims are subject to the protection of the anti-SLAPP statute.

2. *The Secret Recording Claim Moves on to Step Two*

Defendants argue the recording claim must be stricken because Bryan failed to show, as a matter of law, that the recordings were made illegally. (See *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 286-287 ["underlying action was illegal as a matter of law because either the defendant concedes the illegality of the assertedly protected activity or the illegality is conclusively established by the evidence presented in connection with the motion to strike"].) Defendants argue they neither conceded the recordings were made illegally nor does the evidence conclusively establish the illegality. Defendants go on to argue that even if the recordings were made illegally, the activity is protected, nonetheless, because it was done in furtherance of newsgathering. (See *Lieberman v. KCOP Television, Inc.* (2003) 110 Cal.App.4th 156, 166 ["[b]ecause the surreptitious recordings here were in aid of and were incorporated into a broadcast in connection of a public issue, [the court concluded that the] complaint fell within the scope of [§] 425.16"]; see also *Hall v. Time Warner, Inc.*, *supra*, 153 Cal.App.4th at p. 1347 [allegedly illegally obtained audio and video taped interview of Marlon Brando's former housekeeper by a reporter for the producers of *Celebrity Justice* "constituted conduct in furtherance of [the] defendant's right of free speech 'in connection with a public issue or an issue of public interest'"].)

Bryan responds that the evidence demonstrates conclusively that the recordings were made in violation of section 632, and, as such, the conduct is not entitled to protection. (See *Flatley v. Mauro* (2006) 39 Cal.4th 299, 317 ["[§] 425.16 cannot be invoked by a defendant whose assertedly protected activity is illegal as a matter of law and, for that reason, not

protected by constitutional guarantees of free speech and petition"]; see also *Novartis Vaccines and Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2006) 143 Cal.App.4th 1284, 1301 [anti-SLAPP statute did not apply to the defendant's actions "because they constituted "'true threats'" which are not protected by the First Amendment"].) Bryan adds that even if legitimate newsgathering were entitled to protection, given the facts alleged herein, defendants' conduct does not qualify as legitimate newsgathering.

We need not resolve this dispute because even if defendants met their burden of showing protected activity under step one, Bryan has met his burden under step two by demonstrating a probability of prevailing. (See *Oasis West Realty, LLC v. Goldman*, *supra*, 51 Cal.4th at p. 820 [while the court would ordinarily consider the two prongs of the anti-SLAPP analysis in order, "[i]n light of [the] court's 'inherent, primary authority over the practice of law'" it would "proceed in these particular circumstances directly to the second prong, inasmuch as [it] . . . readily found that [the plaintiff] . . . demonstrated a probability of prevailing on its claims"]; *Southern California Gas Co. v. Flannery* (2014) 232 Cal.App.4th 477, 485 [court "need not engage in the first step of the anti-SLAPP analysis" but "proceed[ed] directly to second step of analysis" because the probability that the plaintiff would prevail on the merits of the action was an adequate basis for affirming the trial court's denial of the anti-SLAPP motion]; *Hardin v. PDX, Inc.* (2014) 227 Cal.App.4th 159, 166 [finding no need to answer the "interesting question" of whether the plaintiff's claims arose from protected activity because "if credited at trial [the] evidence would be sufficient to support a favorable judgment"].)

C. *Step Two—Probability of Success*

At the second step of the analysis, "the burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated. The court, without resolving evidentiary conflicts, must determine whether the plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment." (*Baral v. Schnitt*, *supra*, 1 Cal.5th at p. 396.)

"In determining whether a plaintiff has demonstrated the requisite probability of prevailing, section 425.16, subdivision (b)(2), requires that the court 'consider the pleadings, and supporting and opposing affidavits stating the facts upon which the *liability or defense* is based.' . . . Thus on its face the statute contemplates consideration of the substantive merits of the plaintiff's complaint, as well as all available defenses to it . . . ." (*Traditional Cat Assn., Inc. v. Gilbreath* (2004) 118 Cal.App.4th 392, 398.) Therefore, if a claim is barred by the statute of limitations, it is meritless and subject to an anti-SLAPP motion. (*Id*. at p. 399; accord, *Barry v. State Bar of California* (2017) 2 Cal.5th 318, 325.)

1. *The Publication Claims Are Barred by the Statute of Limitations*

With respect to the publication claims, defendants argue the causes of action accrued when the 1995 article was published. If so, the statute of limitations ran long before Bryan filed suit in 2015. Bryan argues in response that when the BBC aired the *Panorama* show and the headline from the article appeared on-

screen, the article was republished and the statute of limitations was reset, making his 2015 filing timely.[7] In short, Bryan's argument fails because he cannot overcome the bar of the single publication rule, and the BBC's 2014 airing of the headlines from the 1995 article does not constitute republication.[8]

---

[7] The statute of limitations is one year for defamation (Code Civ. Proc., § 340, subd. (c); *Schneider v. United Airlines, Inc.* (1989) 208 Cal.App.3d 71, 75), invasion of privacy (Code Civ. Proc., § 340, subd. (c); *Cain v. State Farm Mut. Auto. Ins. Co.* (1976) 62 Cal.App.3d 310, 313), and illegal recording (Code Civ. Proc., § 340, subd. (a); *Warden v. Kahn* (1979) 99 Cal.App.3d 805, 816, fn. 8). The statute of limitations for intentional interference with prospective economic advantage is two years. (Code Civ. Proc., § 339, subd. 1; *Augusta v. United Service Automobile Assn.* (1993) 13 Cal.App.4th 4, 10.)

[8] Here, defendants argue Bryan cannot establish a probability of prevailing on the merits, relying in part on their statute of limitations affirmative defense. In *Dickinson v. Cosby* (2017) 17 Cal.App.5th 655 at page 683, the court noted, "There is some dispute in the case law as to which party bears the burden of proof on an affirmative defense in the context of an anti-SLAPP motion. Some cases state that 'although section 425.16 places on the plaintiff the burden of substantiating its claims, a defendant that advances an affirmative defense to such claims properly bears the burden of proof on the defense. [Citation.]' (*Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 676 . . . .) Others suggest that [an affirmative defense] presents '"a substantive defense a plaintiff must overcome to demonstrate a probability of prevailing. [Citations.]" [Citation.]' (*Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467, 1485 . . . .) Given the evidence in this case, we need not resolve the dispute here. What

a. *The Single Publication Rule*

The single publication rule, codified in Civil Code section 3425.3, states: "No person shall have more than one cause of action for damages for libel or slander or invasion of privacy or any other tort founded upon any single publication or exhibition or utterance, such as any one issue of a newspaper or book or magazine or any one presentation to an audience or any one broadcast over radio or television or any one exhibition of a motion picture. . . ." "The purpose of the statute is to abrogate the former rule, under which the sale of each copy of a newspaper or other publication containing libelous matter was deemed to give rise to a separate cause of action. [Citation.] The result of the former rule was to grant a litigant claiming to have been libeled, countless separate causes of action, together with virtual immunity from the bar of any statute of limitations." (*Belli v. Roberts Bros. Furs* (1966) 240 Cal.App.2d 284, 288; see also *Shively v. Bozanich* (2003) 31 Cal.4th 1230, 1243-1244.)

Thus, "for any single edition of a newspaper or book, there [is] but a single potential action for a defamatory statement contained in the newspaper or book, no matter how many copies of the newspaper or the book were distributed. [Citations.]"

---

is important is that, regardless of the burden of proof, the court must determine whether [the] plaintiff can establish a prima facie case of prevailing, or whether [the] defendant has defeated [the] plaintiff's evidence as a matter of law. [Citations.]" As we discuss below, the evidence establishes as a matter of law that Bryan's publication claims are barred by the statute of limitations. The evidence also demonstrates that as to Bryan's illegal recording claim, the statute of limitations does not bar the cause of action.

(*Shively v. Bozanich*, *supra*, 31 Cal.4th at p. 1245, fn. omitted.)[9] "Under the single-publication rule, with respect to the statute of limitations, publication generally is said to occur on the 'first general distribution of the publication to the public.' [Citations.] Accrual at that point is believed to provide adequate protection to potential plaintiffs, especially in view of the qualification that repetition of the defamatory statement in a *new edition* of a book or newspaper constitutes a new publication of the defamation that may give rise to a new cause of action, with a new accrual date. [Citation.] Under this rule, the cause of action accrues and the period of limitations commences, *regardless* of when the plaintiff secured a copy or became aware of the publication. [Citations.]" (*Id*. at pp. 1245-1246, fn. omitted.)

Absent some exception, the single publication rule forecloses any claim based upon the 1995 publication. Bryan submits the BBC's airing of the headline in 2014 falls within the reasonably foreseeable exception to the single publication rule. The trial court agreed. The trial court stated that "the declaration of Mr. Grayson establishes for purposes of this motion that [d]efendants routinely engaged [in] the type of 'entrapment' alleged here as a means of manufacturing news stories for their own headlines. Mr. Grayson refers to this practice as [d]efendants' 'modus operandi.' . . . In light of these statements, and other news articles pertaining to [d]efendants' newsgathering practices . . . , there is at least an issue of fact as

---

[9] This rule "largely has been codified in the Uniform Single Publication Act [(Civ. Code, § 3425.1 et seq.)], which has been adopted in many states, including California." (*Shively v. Bozanich*, *supra*, 31 Cal.4th at p. 1246.)

to whether it was reasonably foreseeable that the 1995 article would be republished. Given the allegedly illegal and questionable nature of [d]efendants' practices, it is certainly reasonable to conclude that at some point those practices would in effect become 'the story,' and in that connection there would be a republication of the original publication. That is what happened here, and in the course of the BBC broadcast, among other things, the front page of the 1995 article, and other aspects, were broadcast. . . . Accordingly, [Bryan] has made the requisite showing to overcome the statute of limitations defense . . . ." (Fn. omitted.) Thus, we turn to the issue of republication.

b. *Republication*

"Under the single-publication rule, the statute of limitations is reset when a statement is republished. [Citation.] A statement in a printed publication is republished when it is reprinted in something that is not part of the same 'single integrated publication.'" (*Yeager v. Bowlin* (9th Cir. 2012) 693 F.3d 1076, 1082, quoting *Christoff v. Nestlé USA, Inc.* (2009) 47 Cal.4th 468, 477.) This reset of the statute of limitations applies "to situations where, knowing that matter is allegedly libelous, the defendant republishes." (*Kanarek v. Bugliosi* (1980) 108 Cal.App.3d 327, 332; accord, *Schneider v. United Airlines, Inc.*, *supra*, 208 Cal.App.3d at p. 76; see Rest.2d Torts (1977) § 577A, com. d.) In the present case, defendants did not republish the article; a third party, the BBC, did. Where the republication is done by a third party additional considerations apply.

The originator of a defamatory statement may be liable for the republication by a third party in either of the following two circumstances: (1) the repetition was authorized or intended by

the original defamer, or (2) the repetition was reasonably to be expected. (*Mitchell v. Superior Court* (1984) 37 Cal.3d 268, 281 ["California decisions follow the restatement rule," which says "the original defamer is liable if either 'the repetition was authorized or intended by the original defamer' . . . or 'the repetition was reasonably to be expected'," quoting Rest. 2d Torts (1977) § 576, coms. b and c.) Consequently, for the statute of limitations to be reset to 2015, defendants either had to authorize the BBC to use its headline during the *Panorama* show, or defendants should have reasonably expected the BBC to use its 1995 article during the BBC's 2014 *Panorama* show.

The first prong of the test is inapplicable because defendants did not authorize the use of the article by the BBC. Thus, the critical question is whether the repetition of the story was reasonably to be expected, i.e., foreseeable, by defendants.

c. *Reasonable Foreseeability*

Reasonable foreseeability is a narrow exception to the single publication rule. Generally, the exception applies in two types of cases: where the republication was compelled and where the republication was the natural and probable consequence of the original speaker's disclosure.

i. *Compelled Disclosure*

In *McKinney v. County of Santa Clara* (1980) 110 Cal.App.3d 787, a case cited by both parties, the plaintiff, Craig McKinney, a former probationary deputy sheriff, sued the county for libel, slander and wrongful termination. The alleged defamatory statement was made during his job performance review. When McKinney sought new employment with a

different police agency, he "republished" the original defamatory statements when he explained why he was previously terminated. The county relied on "the general rule that where the person defamed voluntarily discloses the contents of a libelous communication to others, the originator of the libel is not responsible for the resulting damage." (*Id*. at p. 796.) McKinney "asserted that the republication by himself was not voluntary but, rather, required of him as a practical matter by the police agencies at which he applied for a new job." (*Id*. at pp. 792-793.) The court, facing "a question of first impression in this state" (*id*. at p. 795), noted an exception to the general rule arises "where the originator of the defamatory statement has reason to believe that the person defamed will be under a strong compulsion to disclose the contents of the defamatory statement to a third person *after* he has read it or been informed of its contents. [Citations.]" (*Id*. at p. 796.) The court explained that "[t]he rationale for making the originator of a defamatory statement liable for its foreseeable republication is the strong causal link between the actions of the originator and the damage caused by the republication. This causal link is no less strong where the foreseeable republication is made by the person defamed operating under a strong compulsion to republish the defamatory statement and the circumstances which create the strong compulsion are known to the originator of the defamatory statement at the time he communicates it to the person defamed." (*Id*. at pp. 797-798.)

ii. *Natural and Probable Consequences*

In *Schneider v. United Airlines, Inc.*, *supra*, 208 Cal.App.3d 71, another case relied upon by both parties, United Airlines

"transmitted to . . . a consumer credit reporting organization[] information that [the] respondents had 'charged off' the sum of $200 on [the] appellants' account, a statement which [the] appellants claim is defamatory." (*Id*. at p. 74.) The credit reporting agency then republished the false statements "by transmitting them to" another bank and the bank denied the appellants a credit card. (*Ibid*.) Citing *McKinney*, the court applied the republication exception, finding it clear that "when [the] respondents gave [the] credit reporting agency[] information pertinent to [the] appellants' credit, they necessarily must have foreseen that said information would be distributed to others (republished) as that is the function of a credit reporting agency." (*Id*. at p. 75.)

In *Barnette v. Wilson* (1997) 706 So.2d 1164, the Montgomery police department conducted an internal investigation. A "'sting'" operation was set up and several officers were detained. The officers resigned, and the police chief held a press conference. He announced, "'We found four dirty cops and four dirty cops are gone.'" The local media published related stories for several weeks. The former police officers sued the police chief for slander. The police chief argued he was not liable for damages resulting from the media's repetition of this statements. (*Id*. at p. 1166.) The police officers sued in federal court, and the court certified the following question for resolution by the Alabama Supreme Court: "'Is a person who publishes a slander at a press conference responsible for damages caused by the expected and intended repetition of the slander by the news media?'" (*Id*. at p. 1165.) The court answered the question in the affirmative, and explained, "'The general rule is that one who publishes a defamatory statement will not be held liable for the

repetition of it by others. [Citation.] When, however, the second publication is a natural and probable consequence of the first, the initial publisher is responsible for it. [Citation.]" (*Id.* at p. 1166.) The court concluded, "An actor is presumed to intend the logical outcome of his actions. One who publishes a defamatory statement to news media will not be shielded from liability just because the harm to the person defamed has resulted from the republication by the news media." (*Id.* at p. 1167.)[10]

d. *The Reasonable Foreseeability Exception Does Not Apply*

The present case does not fit into either of the foregoing reasonable foreseeability categories. This is not an employment case where a terminated employee was compelled to disclose the defamatory statement to secure new employment. Indeed, defendants did not do anything to compel the BBC to republish

---

10 *Di Giorgio Corp. v. Valley Labor Citizen* (1968) 260 Cal.App.2d 268 and *Murphy v. Boston Herald, Inc.* (2007) 449 Mass. 42 [865 N.E.2d 746], two cases cited by defendants, are better understood as cases involving republication based upon authorization than reasonable foreseeability. In *Di Giorgio,* because there was "no substantial evidence to prove that defendant . . . authorized, consented to, or participated in the republication of his article," there was no liability for republication in the Valley Labor Citizen. (*Di Giorgio, supra,* at p. 272.). In *Murphy*, because there was "no real doubt that the reporters were authorized (and even encouraged)" to republish the statements, liability for republication attached. (*Murphy*, *supra*, at pp. 65-66.) Because authorization is a separate and independent basis to find republication, these cases add little definition to the parameters of reasonable foreseeability.

the article; the BBC did so on its own accord. Nor was the BBC's use of the heading in 2014 the natural and probable consequence of the 1995 publication.

Outside of the two foregoing categories, courts are reluctant to expand the breadth of reasonable foreseeability. (See *Dible v. Haight Ashbury Free Clinics, Inc.* (2009) 170 Cal.App.4th 843, 855 ["Here we are clearly being asked to create a wider exception for claimants who have not republished where it is foreseeable that they might do so in the future. We decline to do so"] For example, in *Geraci v. Probst* (2010) 15 N.Y.3d 336 [938 N.E.2d 917], the court rejected the argument that notoriety made the republication reasonably foreseeable. In 2002, the defendant wrote a defamatory letter about the plaintiff to the Board of Fire Commissioners, and, in 2003, the plaintiff sued the defendant for defamation. In 2005, a newspaper published an article regarding an investigation of the fire department that included the defendant's defamatory statement. The article was admitted into evidence during the defamation trial. (*Id*. at pp. 340-341.)

The court found the republication exception did not apply, and the 2005 article should not have been admitted into evidence. (*Geraci v. Probst*, *supra*, 15 N.Y.3d at p. 343.) The court explained that the plaintiff "failed to demonstrate that [the defendant] had any connection whatsoever with the . . . article. Notably, the article was published more than three years after [the defendant] wrote the letter to the [b]oard. There is no evidence that [the defendant] contacted anyone at Newsday in order to induce them to print his allegations. Nor is there evidence that anyone at [the newspaper] contacted [the defendant] regarding the story. Finally, there is no indication that [the defendant] had any control over whether or not [the

newspaper] published the article. '[A]bsent a showing that [defendant] approved or participated in some other manner in the activities of the third-party republisher' [citation], there is no basis for allowing the jury to consider the article containing the republished statement as a measure of [the] plaintiff's damages attributable to [the] defendants." (*Ibid.*)

The plaintiff, nonetheless, asserted that the defendant "should be liable for the damages caused by the [newspaper] article because republication was to be reasonably expected. Specifically, [the] plaintiff argue[d] that when allegations of this type of misconduct are made against a public official, it is reasonable as a matter of law to expect that those allegations will be newsworthy and that it would then be a matter for the factfinder as to whether it would be objectively reasonable to expect republication in the media under the facts of a particular case." (*Geraci v. Probst*, *supra*, 15 N.Y.3d at p. 343.) The court rejected this argument, explaining that "the Restatement 'foreseeability' standard is not nearly as broad" as the plaintiff asserted. (*Ibid.*) "Comment *d* [of the Restatement Second of Torts] explains that a republication may be foreseeable '[i]f the defamation is repeated by a person to whom it is published' if the originator of the statement 'had reason to expect that it would be so repeated.' The obvious example is when a person makes a defamatory statement to a newspaper reporter who, in turn, repeats it in a newspaper article . . . . The second example in comment *d* occurs when the originator of a statement 'widely disseminated the defamation and thus intimated to those who heard it that he [or she] is not unwilling to have it known to a

large number of people.'[11] Neither of these circumstances is present here: [the defendant] never made any statements to [the newspaper] reporters (and [the newspaper] apparently did not contact him before publishing the story), nor did [the defendant] 'widely disseminate' the allegations concerning [the] plaintiff. Thus, even if we were to adopt the Restatement's foreseeability

---

11 The text of comment d to section 576 of the Restatement Second of Torts states: "If the defamation is repeated by a person to whom it is published under circumstances that make its repetition actionable as an unprivileged publication (see § 578), the originator is liable, although he did not intend the repetition, if he had reason to expect that it would be so repeated. In determining this, the known tendency of human beings to repeat discreditable statements about their neighbors is a factor to be considered. So too, if the originator has himself widely disseminated the defamation and thus intimated to those who heard it that he is not unwilling to have it known to a large number of people, the fact may be taken into account in determining whether there were grounds to expect the further dissemination of the slander. On the other hand, the defamation may have been published under such circumstances or to such persons as to give reasonable assurance that it would go no further. In this case a court may be justified in ruling that there is no evidence from which the jury could reasonably find that the harm done by the repetition of the defamation is the legal consequence of the original publication." Considerations concerning the scope of the dissemination are inapplicable in cases involving publication by newspapers, which by their very nature are widely circulated. When the speaker is a newspaper, the single publication rule applies to a single issue of that newspaper, "no matter how many copies of the newspaper . . . were distributed." (*Shively v. Bozanich*, *supra*, 31 Cal.4th at p. 1245.)

standard, it would not lead us to the conclusion urged by [the] plaintiff." (*Id*. at pp. 343-344.) The court concluded the republication exception did not apply where "the authors 'had no knowledge of and played no role in' the republication or its implementation." (*Id*. at p. 344.)

The circumstances presented here similarly do not warrant the expansion of the reasonable foreseeability exception.[12] Here, defendants played no role in the 2014 BBC *Panorama* republication of the original 1995 News of the World story. The *Panorama* story was not about Bryan. It was about Mahmood, and how, "posing as a fake sheikh," he "delighted in exposing the secrets of the rich and famous." It referred to the many people

---

12 Even if we were to draw upon the test for reasonable foreseeability as used in other contexts, the result would be the same. In negligence cases, "'"[F]oreseeability is not to be measured by what is more probable than not, but includes whatever is likely enough in the setting of modern life that a reasonably thoughtful [person] would take account of it in guiding practical conduct."' [Citation.] . . . [Citation.] 'If, as a matter of ordinary experience, a particular act or omission might be expected to produce a particular result, and if that result has in fact followed, the conclusion may be justified that the causal relation exists.'" (*Kumaraperu v. Feldsted* (2015) 237 Cal.App.4th 60, 69 [negligence]; *George A. Hormel & Co. v. Maez* (1979) 92 Cal.App.3d 963, 968 [damages caused by negligence are those which are "[t]he natural, logical, and foreseeable consequence" of a party's actions].) In contract cases, reasonable foreseeability is described as damages which "naturally arise" from a party's actions. (*Brandon & Tibbs v. George Kevorkian Accountancy Corp.* (1990) 226 Cal.App.3d 442, 455-456 [damages for breach of contract].)

who had been "sent to jail following his undercover stings." It stated that after winning awards for his investigative journalism, he now "stands accused of being a liar" following a criminal trial in which he was accused of entrapment and the defendant was acquitted. An interview with Grayson regarding Mahmood's techniques led to a discussion of the Las Vegas meeting with Bryan, during which Bryan denied the allegations of the 1995 News of the World story, and Grayson admitted Mahmood had falsified the story. The narrator announced that "Mahmood had got his story"; the front page of the 1995 story was shown and the narrator read the headline. When confronted with new evidence provided by Mahmood, Bryan explained the evidence and denied the allegations of illegal activity. The program then turned to other stings by Mahmood.

Any reference to the original 1995 News of the World story in 2014 was not a result of its publication in 1995, but rather was because of subsequent events which led to an investigation into Mahmood's tactics. While there is a link between the headlines, there is no strong causal connection between the 1995 publication and the airing of the article's headline in the 2014 *Panorama* show. The republication did not "naturally arise" from the publication of the original 1995 News of the World story (*Brandon & Tibbs v. George Kevorkian Accountancy Corp.*, *supra*, 226 Cal.App.3d at pp. 455-456). Nor was it a natural and logical consequence of the publication of that story (*George A. Hormel & Co. v. Maez*, *supra*, 92 Cal.App.3d at p. 968).

As a temporal equation, no case cited by defendants extends reasonable foreseeability outwards of 19 years. Indeed, three years was too long in *Geraci*. (*Geraci v. Probst*, *supra*, 15 N.Y.3d at p. 343.) Nor is it reasonably foreseeable that Bryan's

1995 conduct would remain newsworthy in 2014. And it was not. The defendants' conduct was.

The facts presented here fit precisely within the four corners of the single publication rule, rather than into an exception to it. In 1995, Bryan had every opportunity to bring his suit. The very purpose of the single publication rule is to prevent the potential for indefinite tolling of the statute of limitations that "could occur if a copy of the newspaper or book were preserved for many years and then came into the hands of a new reader who had not discovered it previously." (*Shively v. Bozanich*, *supra*, 31 Cal.4th at p. 1244.) The trial court's creation of a 20-year downstream whistleblower or exposé exception finds no precedent in the law nor basis to circumvent the single publication rule.

While "[o]rdinarily, foreseeability is a question of fact for the finder of fact, . . . it may be decided as a question of law if under the undisputed facts there is no room for a reasonable difference of opinion. [Citations.]" (*Kumaraperu v. Feldsted*, *supra*, 237 Cal.App.4th at p. 69.) Here, as a matter of law, the reasonable foreseeability exception to the single publication rule does not apply. The trial court erred in finding that it did. Accordingly, Bryan's cause of action for libel is barred by the statute of limitations. (*Shively v. Bozanich*, *supra*, 31 Cal.4th at p. 1247; *Belli v. Roberts Bros. Furs*, *supra*, 240 Cal.App.2d at pp. 289-290.)

2. *Second Cause of Action for Invasion of Privacy*

Bryan's second cause of action for invasion of privacy purports to be based on both the illegal recording of his conversations with Grayson, Malik and Mahmood and the

republication of the News of the World story "which disclosed private facts about [him] and placed him in a false light."[13] Bryan hoped to avoid the bar of the statute of limitations based upon the republication of the 1995 article in 2014. For the same reasons discussed above, this argument fails. (See Civ. Code, § 3425.3 ["[n]o person shall have more than one cause of action for damages for . . . invasion of privacy . . . founded upon any single publication"]; *Christoff v. Nestlé USA, Inc.*, *supra*, 47 Cal.4th at p. 476 [single publication rule applies to action for invasion of privacy].) Accordingly, the trial court erred by denying the motion as to this cause of action.[14]

---

[13] There are "four distinct kinds of activities violating the privacy protection and giving rise to tort liability: (1) intrusion into private matters; (2) public disclosure of private facts; (3) publicity placing a person in a false light; and (4) misappropriation of a person's name or likeness." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 24.)

[14] As we discuss below, Bryan's claim based on recording alone is not barred by the statute of limitations. On remand, Bryan may seek leave to amend his complaint to plead a claim for invasion of his privacy related to the illegal recording alone, i.e., intrusion into private matters, apart from any publication. (Code Civ. Proc., § 473, subd. (a)(1) [the trial court may, "in its discretion, after notice to the adverse party, allow, upon such terms as may be just, an amendment to any pleading"]; see *Dickinson v. Cosby*, *supra*, 17 Cal.App.5th at pp. 676-679 [allowing the plaintiff to amend complaint to name a new defendant while anti-SLAPP motion was pending would not implicate concerns expressed in cases barring amendment while an anti-SLAPP motion was pending]; *Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism* (2016) 6 Cal.App.5th

3. *Fourth Cause of Action for Intentional Interference With Prospective Economic Advantage*

Bryan's fourth cause of action for intentional interference with prospective economic advantage alleged that defendants knew he had an economic relationship with the owner of the Las Vegas hotel and intended to disrupt that relationship "by publishing a scandalous story about Bryan." For the same reasons discussed above, this claim is barred by the statute of limitations.

To preserve this claim, however, Bryan argues the cause of action did not accrue until he learned of the illegal recording on October 4, 2014, when he met with Grayson during the taping of the *Panorama* program. In determining when a cause of action accrues, "it is the underlying injury and not the legal theories of recovery superimposed on the injury that dictates the applicable statute of limitations." (*McCoy v. Gustafson* (2009) 180 Cal.App.4th 56, 104.) "This means, '"the statute of limitations begins to run when the plaintiff suspects or should suspect that [his or] her injury was caused by wrongdoing, that someone has done something wrong to [him or] her." [Citation.]' [Citation.] It is not necessary that the plaintiff know the exact manner in

---

1207, 1219, review granted Mar. 22, 2017, S239777, argued Jan. 3, 2018 [discussing filing of an amended complaint, and noting that it reopens the time in which to file an anti-SLAPP motion where it "pleads new causes of action that could not have been the target of a prior anti-SLAPP motion"].) We perceive no problem with such an amendment so long as the new cause of action is not based on the publication and thus will not "frustrate[] the purposes of the anti-SLAPP statute." (*JKC3H8 v. Colton* (2013) 221 Cal.App.4th 468, 479.)

which the injuries were effected. [Citation.]" (*Burdette v. Carrier Corp.* (2008) 158 Cal.App.4th 1668, 1692, citing *Bernson v. Browning-Ferris Industries* (1994) 7 Cal.4th 926, 932; see also *Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 192 ["'Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, [he] must decide whether to file suit or sit on [his] rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts; [he] cannot wait for the facts to find [him]'"].)

Bryan's cause of action for intentional interference with prospective economic advantage is based on the harm he suffered as a result of the publication of the 1995 News of the World story, i.e., the loss of the hotel deal, not on the illegal recording of conversations. His cause of action accrued at the time Bryan discovered the *harm*—when the story was published and the deal fell through—not when he discovered the illegal recording in 2014. (*McCoy v. Gustafson*, *supra*, 180 Cal.App.4th at p. 104; *Burdette v. Carrier Corp.*, *supra*, 158 Cal.App.4th at p. 1692.)[15]

---

[15] The elements of a cause of action for intentional interference with prospective economic advantage are (1) plaintiff's economic relationship with a third party which offered the probability of future economic benefit; (2) defendants' knowledge of this relationship; (3) defendants' intentional acts designed to disrupt that relationship; (4) actual disruption of the relationship; and (5) economic harm to plaintiff proximately caused by defendants' acts. (*San Jose Construction, Inc. v. S.B.C.C., Inc.* (2007) 155 Cal.App.4th 1528, 1544.) "With respect to the third element, a plaintiff must show that the defendant engaged in an independently wrongful act," that is, "defendant's interference must be wrongful by some legal measure beyond the

Because Bryan's cause of action for intentional interference with prospective economic advantage is barred by the statute of limitations, the trial court erred by denying the motion to strike.

4. *Trial Court Properly Denied the Anti-SLAPP Motion as to the Illegal Recording Cause of Action*

Bryan's third cause of action for illegal recording in violation of sections 632 and 637.2 is based on defendants' surreptitious recording of his conversations with Grayson, Malik and Mahmood. Section 632 makes criminal "the intentional recording of a 'confidential communication' without the consent of all parties to the communication." (*Wilkins v. National Broadcasting Co.* (1999) 71 Cal.App.4th 1066, 1079, fn. omitted.)

---

fact of the interference itself." (*Ibid.*; see also *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 393.) "[A]n act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1159, fn. omitted; accord, *San Jose Construction, Inc.*, *supra*, at pp. 1544-1545.) Bryan was aware of defendants' independently wrongful acts which caused him economic harm when they published the 1995 story containing the allegedly libelous material which portrayed him in a false light and which caused the hotel deal to fall through. It was not necessary that Bryan knew defendants illegally recorded him; he knew "their interference amount[ed] to independently actionable conduct" when he learned of the story about him. (*Korea Supply Co.*, *supra*, at p. 1159; see *Burdette v. Carrier Corp.*, *supra*, 158 Cal.App.4th at p. 1692.)

Section 637.2, subdivision (a), permits a civil action for violation of section 632. (*Ibid*.)

Once defendants have made their showing that the plaintiff's cause of action arises from protected activity—which for purposes of our analysis we presume to have been the case here—the burden shifts to the plaintiff to establish a "probability" of prevailing on the claim. (§ 425.16, subd. (b)(1); *Kenne v. Stennis*, *supra*, 230 Cal.App.4th at p. 962; *Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 355.)

a. *Bryan Has Established a Probability of Prevailing on the Merits*

To establish a probability of prevailing, "the plaintiff 'must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.' [Citations.]" (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821, quoting *Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 548; accord, *Nunez v. Pennisi* (2015) 241 Cal.App.4th 861, 872.) "'The plaintiff's cause of action needs to have only "'minimal merit' [citation]" to survive an anti-SLAPP motion. [Citation.]' [Citation.]" (*Kenne v. Stennis*, *supra*, 230 Cal.App.4th at p. 963; accord, *Nunez, supra*, at p. 872; see *Stenehjem v. Sareen* (2014) 226 Cal.App.4th 1405, 1414 [the standard is "'similar to that employed in determining nonsuit, directed verdict or summary judgment motions"'].) The plaintiff is afforded "a certain degree of leeway in establishing a probability of prevailing on its claims due to 'the early stage at which the [anti-SLAPP] motion is brought and heard [citation] and the limited opportunity to conduct discovery [citation].'

[Citation.]" (*Integrated Healthcare Holdings, Inc. v. Fitzgibbons* (2006) 140 Cal.App.4th 515, 530.)[16] "[T]he plaintiff's burden of establishing a probability of prevailing is not high: We do not weigh credibility, nor do we evaluate the weight of the evidence. Instead, we accept as true all evidence favorable to the plaintiff and assess the defendant's evidence only to determine if it defeats the plaintiff's submission as a matter of law." (*Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 699-700; accord, *Southern California Gas Co. v. Flannery, supra,* 232 Cal.App.4th at p. 486.) This showing includes evidence sufficient to overcome any affirmative defenses raised by the defendants. (See *Traditional Cat Assn., Inc. v. Gilbreath*, *supra*, 118 Cal.App.4th at pp. 404-405 [no probability of prevailing where evidence showed cause of action was barred by the statute of limitations]; *Kashian v. Harriman* (2002) 98 Cal. App.4th 892, 926-927 [where the plaintiff's defamation action was

---

16 Bryan argues the recordings are in the "exclusive possession and control" of the defendants, and, notwithstanding their possession of the secret tapes, they failed to introduce the recordings or any details about the recordings into evidence. By not introducing any evidence, Bryan argues, defendants have not countered or undermined Bryan's claim of confidentiality. Defendants respond this assertion is a "red herring" because Bryan was present at the time the recordings were made, so he should be able to describe with greater particularity the circumstances of the recordings, such as where the conversations took place and who was present. The recordings were made over 20 years ago and, based upon Bryan's declaration, he was unaware at the time he was being recorded. It is an understatement to say discovery may prove useful.

barred because based on a privileged communication, the plaintiff failed to demonstrate a probability of prevailing].)

Under subdivision (c) of section 632, a confidential communication is "a 'communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering . . . or in any other circumstances in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.'" (*Wilkins v. National Broadcasting Co., supra*, 71 Cal.App.4th at pp. 1079-1080.) The determination whether a communication was confidential "'turns on the reasonable expectations of the parties judged by an objective standard and not by the subjective assumptions of the parties.' [Citation.] 'The test of confidentiality is objective.' [Citation.]" (*Id*. at p. 1080.)

Bryan stated in his declaration that he met with Mahmood, Malik and Grayson at the Beverly Hilton hotel, and they went to dinner at Drai's restaurant. After that, "I met again with Mr. Grayson at night at the hotel. Mr. Grayson asked me to procure cocaine and prostitutes for the Sheikh and Mr. Malik. I absolutely refused. I expected that all of my conversations with Mr. Malik, the Sheikh and Mr. Grayson were private conversations, and I had no reason to believe at the time that they were being recorded."

Grayson confirmed in his declaration that he met with Bryan at the Beverly Hilton hotel, where he asked Bryan to obtain cocaine and prostitutes for the sheikh, and Bryan refused. Grayson "secretly recorded both of those conversations." Mahmood subsequently listened to the recordings and agreed Bryan had said nothing incriminating. Grayson later learned

that Malik or Mahmood "had recorded telephone conversations with Mr. Bryan." In 2014, when he was present in the BBC studios, Bryan listened to recordings of the telephone conversations from 1995. "This was when [Bryan] first learned that [his] telephone conversations had been recorded without [his] knowledge or consent."

The trial court found "[t]he record here shows that [d]efendants violated . . . section 632 when they surreptitiously recorded their conversations with [Bryan]. The declarations of [Bryan] and Mr. Grayson are the principal evidence on the issue, and both men attest to having a private conversation with respect to the Las Vegas hotel transaction. . . . Mr. Grayson states that he 'secretly' recorded this conversation, and that [Bryan's] telephone conversations with Mr. Mahmood and Ali Malik also were recorded. . . . The BBC episode of *Panorama* that aired in 2014 confirmed the secret nature of these recordings. . . . Accordingly, the evidence before the court establishes a violation of . . . section 632."

In *Lieberman v. KCOP Television, Inc.*, *supra*, 110 Cal.App.4th 156, the court analyzed a similar issue related to the confidentiality of a purportedly illegal recording. A reporter, pretending to be a patient, made an appointment to see Lieberman, a physician, at his medical office. The reporter with his assistant present in the room secretly recorded the appointment with Lieberman. Later, on the evening news, the television station aired a segment entitled "'Caught in the Act,'" which featured several portions of the secret recordings. The broadcast reported that Lieberman had prescribed Vicodin without a proper medical examination and referred to Lieberman as a "'drug dealer'" and "'candy doctor.'" (*Id.* at pp. 161-162.)

Reaching the second prong of the anti-SLAPP test, the television station argued Lieberman failed to establish the appointments were confidential because another person was present when the recordings were made. (*Id*. at pp. 167-168.)

The court rejected this argument, explaining, "The concept of privacy is relative. [Citation.] Whether a person's expectation of privacy is reasonable may depend on the identity of the person who has been able to observe or hear the subject interaction. [Citations.] The presence of others does not necessarily make an expectation of privacy objectively unreasonable, but presents a question of fact for the jury to resolve. [Citation.] [¶] Lieberman's evidence demonstrates that he expected his communications to be private and did not expect them to be recorded. We conclude that he has satisfied his burden under section 425.16 to present a prima facie case. But we do not resolve issues of credibility in connection with a SLAPP motion. [Citation.] It is for the jury to decide whether under the circumstance presented Lieberman could have *reasonably* expected that the communications were private. [Citations.]" (*Lieberman v. KCOP Television, Inc.*, *supra*, 110 Cal.App.4th at p. 169.)

Bryan has presented a prima facie case the defendants intentionally recorded confidential communications without his consent. Bryan presented evidence of two different types of illegal recordings: (1) telephone conversations and (2) in person conversations. With respect to the telephone conversations, defendants do not dispute they secretly recorded Bryan's telephone calls, and Bryan presented uncontroverted evidence the calls were recorded without his knowledge or consent. Bryan stated in his declaration that he expected his calls to be

confidential, and nothing presented by the defendants suggests that expectation was unreasonable. To the contrary, absent evidence to the contrary, the one-on-one nature of the private calls confirms the reasonableness of Bryan's expectation. (See *Flanagan v. Flanagan* (2002) 27 Cal.4th 766, 772-773 [adopting the *Frio*[17] test of confidentiality which states that: "'under [§] 632 "confidentiality" appears to require nothing more than the existence of a reasonable expectation by one of the parties that no one is "listening in" or overhearing the conversation'" (italics omitted)].)

The same is true for Bryan's personal conversations with Grayson. After their dinner at Drai's, Bryan met with Grayson at his hotel. The declaration is specific—he met with Grayson. A fair reading of Bryan's declaration is that Grayson was the only other person present when the recorded conversations took place. Grayson's declaration is corroborative. Grayson confirms he met with Bryan and secretly recorded their conversations. Grayson does not mention anyone else being present during their conversation. Bryan states he expected his conversations with Grayson to be private. At this stage, we must accept Bryan's and Grayson's declarations as true, and nothing presented by defendants demonstrates Bryan's expectation of confidentiality was unreasonable. (*Overstock.com, Inc. v. Gradient Analytics, Inc.*, *supra*, 151 Cal.App.4th at pp. 699-700.)

Accordingly, Bryan has demonstrated a probability of prevailing on his cause of action for violation of section 632. (*Wilkins v. National Broadcasting Co., Inc.*, *supra*, 71

---

17 *Frio v. Superior Court* (1988) 203 Cal.App.3d 1480.

Cal.App.4th at p. 1079; *Frio v. Superior Court*, *supra*, 203 Cal.App.3d at p. 1490.) The trial court properly concluded Bryan's cause of action possesses "miminal merit" within the meaning of the anti-SLAPP statute. (*Kenne v. Stennis*, *supra*, 230 Cal.App.4th at p. 963; accord, *Soukup v. Law Offices of Herbert Hafif*, *supra*, 39 Cal.4th at p. 291.)

b. *The Statute of Limitations Did Not Expire*

As a general rule, the statute of limitations begins to run when a claim accrues, i.e., ""'when [it] is complete with all of its elements"—those elements being wrongdoing, harm, and causation.' [Citations.] This is the 'last element' accrual rule: ordinarily, the statute of limitations runs from 'the occurrence of the last element essential to the cause of action.' [Citations.]" (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191-1192.) However, "'[t]o align the actual application of the limitations defense more closely with the policy goals animating it, the courts and the Legislature have over time developed a handful of equitable exceptions to and modifications of the usual rules governing limitations periods. These doctrines may alter the rules governing either the initial accrual of a claim, the subsequent running of the limitations period, or both. The "'most important'" of these doctrines, the discovery rule, where applicable, 'postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action.' [Citations.]" (*Id.* at p. 1192.) The discovery rule applies to a cause of action for violation of the Invasion of Privacy Act. (*Montalti v. Catanzariti* (1987) 191 Cal.App.3d 96, 99-100.)

Bryan presented evidence that it was not until October 4, 2014, when he met with Grayson during the taping of the

Panorama program, that Grayson disclosed to him that defendants had secretly recorded Bryan's conversations. Prior to this disclosure, Bryan had no basis for knowing he had been recorded.[18] Bryan properly invokes the discovery rule to delay the accrual of the cause of action and the commencement of the statute of limitations. Importantly, Bryan does not allege any injury or damages related to the publication of the recorded information.[19] Bryan's cause of action is a "'pure'" section 632 claim. (See *Lieberman v. KCOP Television, Inc.*, *supra*, 110 Cal.App.4th at p. 164 [Lieberman sought damages for the publication of the recorded information and the court pointed out it was not "faced with a 'pure' [§] 632 claim, i.e, one which alleges only a surreptitious recording and no subsequent disclosure or

---

[18] Although the 1995 article includes quotations from Bryan, the article does not refer to a secret recording.

[19] Nor can he. Section 637.2 permits the victim of illegal recording in violation of section 632 to bring a civil action "against the person who committed the violation for the greater of the following amounts: [¶] (1) Five thousand dollars ($5,000) per violation. [¶] (2) Three times the amount of actual damages, if any, sustained by the plaintiff." (§ 637.2, subd. (a); see *Ribas v. Clark* (1985) 38 Cal.3d 355, 365; *Friddle v. Epstein* (1993) 16 Cal.App.4th 1649, 1660-1661 ["Any invasion of privacy involves an affront to human dignity which the Legislature could conclude is worth at least $[5],000. The right to recover this statutory minimum accrued at the moment the [p]rivacy [a]ct was violated"].) "The 'actual damages' referenced must relate directly to the surreptitious recording," not to the disclosure from the publication of the recorded information. (*Lieberman v. KCOP Television, Inc.*, *supra*, 110 Cal.App.4th at p. 167.)

use of the recording. A [§] 632 violation is committed the moment a confidential communication is secretly recorded regardless of whether it is subsequently disclosed"].)

Thus, with respect to the defendants' statute of limitations defense, Bryan has demonstrated a probability of prevailing.[20] (*Traditional Cat Assn., Inc. v. Gilbreath*, *supra*, 118 Cal.App.4th at pp. 398, 404.) The trial court properly denied the defendants' anti-SLAPP motion as to Bryan's illegal recording cause of action.

D. *Liability of the Parent Companies*

Bryan argues News Corporation and News Corp UK & Ireland Limited "should be held liable for the wrongs perpetrated by News of the World." (Italics omitted.) Defendants contend that Bryan failed to allege facts or present evidence supporting imposition of liability on News Corporation and News Corp UK & Ireland Limited (Parent Corporations).[21] The trial court found

---

[20] Bryan discovered the acts giving rise to his cause of action on October 4, 2014, when he met with Grayson and learned of the secret recordings. He filed this action on October 1, 2015, within the one-year limitations period (Code Civ. Proc., § 340, subd. (a); *Warden v. Kahn*, *supra*, 99 Cal.App.3d at p. 816, fn. 8).

[21] Bryan asserts that the Parent Corporations "never argued in their motion that any lower tier subsidiaries such as News Corp UK & Ireland Limited should also not be held liable" and thus cannot raise the issue for the first time on appeal. However, News Corp UK & Ireland Limited joined in News Corporation's anti-SLAPP motion, incorporating all of News Corporation's arguments by reference and claiming that it was similarly situated to News Corporation, and News Corporation's argument applied with equal force to News Corp UK & Ireland Limited.

Bryan showed "a reasonable possibility of showing an agency relationship between News Corporation and News Corp UK & Ireland Limited and their subsidiary—namely, News Group Newspapers Limited, which owned" News of the World.[22]

1. *Applicable Law*

In general, "[a] parent corporation is not liable for the torts of its subsidiaries simply because of stock ownership. [Citation.] Liability may be imposed only where the parent controls the subsidiary to such a degree as to render the latter the mere instrumentality of the former. [Citations.]" (*Institute of Veterinary Pathology, Inc. v. California Health Laboratories, Inc.*

Therefore, the issue is properly raised on appeal. (See *Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 790.)

[22] The existence of an agency relationship is a question of fact based on the particular circumstances of the case. (*Zimmerman v. Superior Court* (2013) 220 Cal.App.4th 389, 401; *Inglewood Teachers Assn. v. Public Employment Relations Bd.* (1991) 227 Cal.App.3d 767, 780.) For this reason, decisions in other lawsuits against News Corporation, on which News Corporation and News Corp. UK rely, based on the actions of various subsidiaries are not dispositive. (See, e.g., *Stern v. News Corp.* (S.D.N.Y. 2010) 2010 U.S. Dist. LEXIS 133119 at p. 14 [no facts in the record showing News Corporation exerted the requisite amount of control over subsidiary publisher of the New York Post]; *Franklin v. Daily Holdings, Inc.* (2015) 135 A.D.3d 87, 96 [21 N.Y.S.3d 6, 14] [the plaintiff failed to plead a cause of action against News Corporation for defamation by a wholly owned subsidiary online newspaper where he failed to allege complete domination of the subsidiary for the purpose of committing a wrong against the subsidiary].)

(1981) 116 Cal.App.3d 111, 119; see also *Marr v. Postal Union Life Ins. Co.* (1940) 40 Cal.App.2d 673, 681 ["Before the courts will disregard the corporate entity of one corporation and treat it as the *alter ego* of another, even though the latter may own all the stock of the former, it must further appear that there is such a unity of interest and ownership that the individuality of the one corporation and the owner or owners of its stock has ceased, and further, that the observance of the fiction of separate existence would under the circumstances sanction a fraud or promote injustice"].)

"In California, two conditions must be met before the alter ego doctrine will be invoked. First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone. [Citations.] 'Among the factors to be considered in applying the doctrine are commingling of funds and other assets of the two entities, the holding out by one entity that it is liable for the debts of the other, identical equitable ownership in the two entities, use of the same offices and employees, and use of one as a mere shell or conduit for the affairs of the other.' [Citations.] Other factors which have been described in the case law include inadequate capitalization, disregard of corporate formalities, lack of segregation of corporate records, and identical directors and officers. [Citations.] No one characteristic governs, but the courts must look at all the circumstances to determine whether the doctrine should be applied. [Citation.] Alter ego is an extreme remedy, sparingly

used. [Citation.]" (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538-539 (*Sonora*).)

Under an agency theory, "[l]iability may be imposed only where the parent controls the subsidiary to such a degree as to render the latter the mere instrumentality of the former." (*Institute of Veterinary Pathology, Inc. v. California Health Laboratories, Inc.*, *supra*, 116 Cal.App.3d at p. 119; *Sonora, supra,* 83 Cal.App.4th at p. 541 [to establish agency liability, a party must demonstrate "the nature and extent of the control exercised over the subsidiary by the parent is so pervasive and continual that the subsidiary may be considered nothing more than an agent or instrumentality of the parent"].) "Control is the key characteristic of the agent/principal relationship. [Citation.] . . . [¶] The nature of the control exercised by the parent over the subsidiary necessary to put the subsidiary in an agency relationship with the parent must be over and above that to be expected as an incident of the parent's ownership of the subsidiary and must reflect the parent's purposeful disregard of the subsidiary's independent corporate existence. [Citation.] The parent's general executive control over the subsidiary is not enough; rather there must be a strong showing beyond simply facts evidencing 'the broad oversight typically indicated by [the] common ownership and common directorship' present in a normal parent-subsidiary relationship. [Citations.] As a practical matter, the parent must be shown to have moved beyond the establishment of general policy and direction for the subsidiary and in effect taken over performance of the subsidiary's *day-to-day* operations in carrying out that policy. [Citations.]" (*Sonora, supra*, at pp. 541-542.)

2. *Analysis*

In support of his alter ego/agency argument, Bryan submitted three documents. The first document is an excerpt from The News Corporation Limited's Statement of Corporate Governance for the fiscal year ending June 30, 2002, which states in relevant part: "The Board of Directors . . . oversees the business of The News Corporation Limited and its controlled entities . . . ."

The second document is a two page print out from News Corporation's website, related to corporate governance, UK newspaper matters, and the Management and Standards Committee (MSC). The document states, in relevant part, that the board of directors of Twenty-First Century Fox, Inc., formerly known as News Corporation, created the MSC "to have oversight of, and take responsibility for, all matters relating to the *News of the World* voicemail interception case, payments to public officials investigation, and all other connected issues at News International (now known as News UK). These matters included, but were not limited to, police enquiries, civil proceedings, Parliamentary proceedings and Lord Justice Leveson's inquiry . . . ."

Finally, Bryan submitted a copy of Rupert Murdoch's 2011 apology issued by News International which states: "The News of the World was in the business of holding others to account. It failed when it came to itself. [¶] We are sorry for the serious wrongdoing that occurred. [¶] We are deeply sorry for the hurt suffered by the individuals affected. [¶] We regret not acting faster to sort things out. [¶] I realise that simply apologising is not enough. [¶] Our business was founded on the idea that a free and open press should be a positive force in society. We need to

live up to this. [¶] In the coming days, as we take further concrete steps to resolve these issues and make amends for the damages they have caused, you will hear more from us."[23]

Based upon these three documents, Bryan argues "[t]he evidence here establishes the requisite control and responsibility for parent company liability for subsidiary agents."[24] Bryan makes a generalized argument, not clearly segregating his agency theory from his alter ego theory. Essentially, Bryan makes the same argument as to both theories, arguing the

---

[23] Murdoch's 2011 apology suggests News International's lack of control enabled News of The World to act as a rogue entity.

[24] Bryan's sole contention concerning agency liability is one of control. Bryan does not argue the Parent Corporations are directly liable for the acts of News Group Newspapers Limited's employees under a theory of *respondeat superior* or ratification. It is axiomatic that arguments not raised are waived. (*Pfeifer v. Countrywide Home Loans, Inc.* (2012) 211 Cal.App.4th 1250, 1282 [""Issues not raised in an appellant's brief are deemed waived or abandoned. [Citation.]" [Citation.] An appellate court 'will not develop the appellants' arguments for them . . . .' [Citation.]"]; *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 [""When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." [Citation.] 'We are not bound to develop appellants' arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived'"]; *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 685 [issues not raised in the appellant's opening brief are deemed waived or abandoned]; *Dills v. Redwoods Associates, Ltd.* (1994) 28 Cal.App.4th 888, 890, fn. 1 [appellate court "will not develop the appellants' arguments for them"].)

documents submitted demonstrate the "requisite control." However, Bryan's conclusory statement is not supported by the evidence.

The first document states the obvious, that the board of directors oversees the business of The News Corporation Limited and its controlled entities, but the document does not identify News Group Newspapers Limited as one of the controlled entities, nor does it discuss the nature of any such control sufficiently to determine whether agency or alter ego principles apply. The second document from January 2016 relates to the creation of the MSC by the board of directors of Twenty-First Century Fox, Inc. to oversee scandals involving voicemail interception and payments to public officials. The creation of the MSC comes roughly two decades after the 1995 article was published. Moreover, the website posting is devoid of any information suggesting a purposeful disregard of the subsidiary's independent corporate existence or that the Parent Corporations have taken over performance of the day to day operations of the subsidiary. Finally, Rupert Murdoch's 2011 apology is a public relations message; nothing more. The apology lacks any details concerning the Parent Corporations' control over or interactions with News Group Newspapers Limited.

None of the documents discusses the corporate relationship in 1995 between News Group Newspapers Limited and the Parent Corporations. Even putting aside the dates, the documents do not demonstrate a unity of interest and ownership between the parent and subsidiary corporations, nor do they reveal whether the organizations shared the same officers, employees and offices, commingled their finance or disregarded corporate formalities. (*Sonora, supra,* 83 Cal.App.4th at pp. 538-

539.) Nothing in these three documents suggests the Parent Corporations' control over News Group Newspapers Limited was so pervasive and continual that "the subsidiary may be considered nothing more than an agent or instrumentality of the parent." (*Id*. at 541.)

Based upon these three documents, Bryan has failed to present a "'prima facie showing of facts to sustain a favorable judgment'" against the Parent Corporations. (*Wilson v. Parker, Covert & Chidester*, *supra*, 28 Cal.4th at p. 821.) The trial court's ruling to the contrary is reversed.

DISPOSITION

The order denying defendants' anti-SLAPP motions is affirmed as to Bryan's third cause of action for illegal recording in violation of sections 632 and 637.2 against News Group Newspapers Limited and Mahmood. The order is reversed as to Bryan's first cause of action for libel, second cause of action for invasion of privacy, and fourth cause of action for intentional interference with prospective economic advantage. The order is reversed as to the third cause of action against News Corporation and News Corp UK & Ireland Limited. The trial court is directed to enter an order granting the motion as to the first, second and fourth causes of action and as to the third cause of action against News Corporation and News Corp UK & Ireland Limited. The parties are to bear their own costs on appeal.

BENSINGER, J.*

We concur:

PERLUSS, P. J. SEGAL, J.

---

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.