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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

OLIVIA VAATETE, Plaintiff and Respondent, v. ZETA GRAFF, Defendant and Appellant.	B276836 (Los Angeles County Super. Ct. No. BC587724)

APPEAL from an order of the Superior Court of Los Angeles County, Holly E. Kendig, Judge. Affirmed.

Arminak Law, Tamar G. Arminak, for Defendant and Appellant.

Dinsmore and Sandelmann, Scott Dinsmore, Brett A. Stroud, for Plaintiff and Respondent.

INTRODUCTION

Olivia Vaatete was in a longterm romantic relationship with Taejoon Lee before he began dating and became engaged to Zeta Graff. After Graff's relationship with Lee ended, Graff accused Vaatete of being sexually involved with Lee during his relationship with Graff and allegedly called Vaatete names commonly understood as charging her with a "want of chastity." (Civ. Code, § 46.) Vaatete sued Graff on a variety of theories, including defamation. Graff moved to strike Vaatete's complaint as a strategic lawsuit against public participation (anti-SLAPP). (Code Civ. Proc., § 425.16.)[1] The trial court denied the motion. We affirm.

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[1] All undesignated statutory citations refer to the Code of Civil Procedure.

Section 425.16, subdivision (b)(1) provides, "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim."

BACKGROUND[2]

Vaatete's complaint asserted causes of action against defendant Graff for libel, slander, false light, and intentional and negligent infliction of emotional distress. Vaatete alleged Graff erroneously believed Lee was having a sexual relationship with her while he was involved with Graff. Enraged, Graff embarked on a course of conduct designed to destroy Vaatete's good reputation. In early 2015, Graff began publishing oral and written defamatory statements about Vaatete.

According to Vaatete's complaint, Graff telephoned Vaatete's mother to falsely report Vaatete was having an affair with Lee and was his "concubine" and "booty call." Graff also posted a series of false statements on websites and/or social media. They described Vaatete in terms that ran the gamut from vintage ("strumpet") and common ("whore") to vulgar, but almost all accused her of wanton sexual behavior. Among other unsavory statements, Graff also allegedly accused Vaatete of being a drug dealer and bringing drugs into Lee's martial arts school.

Graff filed an anti-SLAPP motion, arguing the statements made to Vaatete's mother and posted on the internet concerned matters of public interest—"infidelity, adultery, and fornication"—and Vaatete was not likely to prevail as Graff's

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[2] Because we conclude Graff failed to meet the first step of her anti-SLAPP motion by establishing the challenged conduct arose from protected speech or petitioning, we omit a recitation of facts concerning the second step, i.e., whether Vaatete established a probability she would prevail on her claims. (See *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 80-81 [when a defendant does not establish the first step of an anti-SLAPP motion, a court need not reach the second step].)

statements were either true, nonactionable opinion or ambiguous and were not made with reckless disregard or other culpable motive. The trial court denied the motion, ruling the public interest issue was not whether the public generally was interested in "adultery, fornication and cheating," but whether the specific statements Graff allegedly made about Vaatete were matters of public interest and protected under section 425.16. It further ruled Vaatete adequately showed a probability of prevailing on her claims.

DISCUSSION

I. Applicable Law

Lawsuits against persons who are sued for exercising their constitutional right to free speech in "a public forum in connection with an issue of public interest" (§ 425.16, subd. (e)(3)) "shall be subject to a special motion to strike . . . ." (§ 425.16, subd. (b)(1).) We review de novo an order granting or denying an anti-SLAPP motion. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325-326.) Where the trial court has denied an anti-SLAPP motion, our first analytical step is to determine whether the defendant "demonstrate[d] that the act or acts of which the plaintiff complains were taken 'in furtherance of the [defendant]'s right of petition or free speech under the United States or California Constitution in connection with a public issue,' as defined in the statute. (§ 425.16, subd. (b)(1).)" (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.)

II. Analysis

Although "defamation suits are a prime target of SLAPP motions" (*Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89

Cal.App.4th 294, 305), not every defamation action may be stricken via an anti-SLAPP motion. As *Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181 explained, "a defendant in an ordinary private dispute cannot take advantage of the anti-SLAPP statute simply because the complaint contains some references to speech . . . by the defendant. [Citation.] We conclude it is the *principal thrust* or *gravamen* of the plaintiff's cause of action that determines whether the anti-SLAPP statute applies [citation], and when the allegations referring to arguably protected activity are only incidental to a cause of action based essentially on nonprotected activity, collateral allusions to protected activity should not subject the cause of action to the anti-SLAPP statute." (*Id.* at p. 188, original italics.)

The first step in our analysis is to determine whether the statements allegedly made by Graff were "made in a place open to the public or a public forum in connection with an issue of public interest." (§ 425.16, subd. (e)(3).) We broadly construe the statutory "public interest" requirement. As the Court of Appeal held in *Nygard, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, "'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." (*Id.* at p. 1042, original italics.)

Graff's alleged statements posted on internet sites were "made in a place open to the public or a public forum." But they were not made "in connection with an issue of public interest." Although infidelity and adultery may be considered matters of public concern, nothing in Graff's motion suggests that

private conduct by Vaatete and Lee similarly captures the public's interest. Nor does Vaatete's ownership of a business open to the public, for that reason alone, place her in the public eye where her conduct directly affects individuals other than Graff or Lee.

The Court of Appeal in *World Financial Group, Inc. v. HBW Ins. & Financial Services, Inc.* (2009) 172 Cal.App.4th 1561 (*World Financial*) expressed it thusly: "'[T]hat "a broad and amorphous public interest" can be connected to a specific dispute is not sufficient to meet the statutory requirements' of the anti-SLAPP statute. [Citation.] By focusing on society's general interest in the subject matter of the dispute instead of the specific speech or conduct upon which the complaint is based, defendants resort to the oft-rejected, so-called 'synecdoche theory of public issue in the anti-SLAPP statute,' where '[t]he part [is considered] synonymous with the greater whole.' [Citation.] In evaluating the first prong of the anti-SLAPP statute, we must focus on 'the *specific nature of the speech* rather than the generalities that might be abstracted from it.'" (*Id.* at p. 1570, original italics.)

Or, "[s]imply put, [the defendant's] message did not concern a person in the public eye, conduct that could directly affect large numbers of people beyond the participants, or a topic of widespread public interest." (*D.C. v. R.R.* (2010) 182 Cal.App.4th 1190, 1230; see also *Consumer Justice Center v. Trimedica International, Inc.* (2003) 107 Cal.App.4th 595, 601 ["If we were to accept [the defendant's] argument that we should examine the nature of the speech in terms of generalities instead of specifics, then nearly any claim could be sufficiently abstracted to fall within the anti-SLAPP statute"].)

Graff's alleged statements were not made in the context of a public interest issue. They were personal attacks on Vaatete, impugning her character and accusing her of criminal behavior. As the trial court aptly observed, "the laws of defamation . . . would be undermined if accusations of cheating were always protected speech simply because the public might have a broader interest in the issue of cheating and adultery."[3] (See *World Financial, supra,* 172 Cal.App.4th at p. 1570.)

The issue at this stage of the proceedings is not whether Vaatete can prevail on a defamation—or any other alleged—theory of liability. The issue is whether the alleged statements attributed to Graff constituted protected speech under section 425.16. They did not, and the anti-SLAPP motion was properly denied.

As Graff failed to make the required showing on the first step of a section 425.16 analysis, we do not reach the second. (*City of Cotati v. Cashman, supra,* 29 Cal.4th at pp. 80-81.)

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[3] For this reason, Graff's reliance on *Baral v. Schnitt* (2016) 1 Cal.5th 376 is unavailing. Graff asks this court to strike—or to remand to the trial court for that purpose—all statements that are protected and non-actionable. None of Graff's alleged statements constitutes speech protected by the anti-SLAPP statute, and there is no basis to consider Graff's request.

DISPOSITION

The order is affirmed. Vaatete is awarded her costs on appeal.

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DUNNING, J.*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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