

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ARMEN BOLADIAN et al.,

Plaintiffs and Respondents,

v.

GEORGE CLINTON,

Defendant and Appellant.

B267950 [related pending appeals
B268550, B269508, B270472]

(Los Angeles County
Super. Ct. No. BC576665)

APPEAL from an order of the Superior Court of Los Angeles County, Randolph M. Hammock, Judge. Reversed in part with directions and affirmed in part.

Gerard Fox Law, Morgan E. Pietz, Cyrus Shahriari and Thomas P. Burke, Jr.; Booth Sweet and Dan Booth for Defendant and Appellant.

King & Ballow and Paul H. Duvall for Plaintiffs and Respondents.

Defendant and appellant George Clinton (Clinton) appeals an order denying his special motion to strike a complaint against him for malicious prosecution and defamation. (Code Civ. Proc., § 425.16.) The complaint was brought by plaintiffs and respondents Armen Boladian (Boladian), Bridgeport Music, Inc. (Bridgeport), and Westbound Records, Inc. (Westbound) (sometimes collectively referred to as Boladian)¹

The essential issues presented relate to whether Boladian made a sufficient prima facie showing to withstand Clinton's special motion to strike. For the reasons discussed below, we affirm in part and reverse in part.

FACTUAL AND PROCEDURAL BACKGROUND

1. The underlying action.

On December 5, 2011, Clinton filed suit in the United States District Court for the Central District of California against Westbound and its owner, Boladian, among others. Clinton initially was represented in that action by Attorney Larry H. Clough.

The original complaint, which contained numerous causes of action, alleged as follows: Clinton is the original creator of, and has rights, title and interest in, the Funkadelic sound recordings released by Westbound (the Westbound Sound Recordings). In 1969, in an oral agreement, Clinton granted Westbound rights to said recordings in exchange for Westbound's

¹ The order denying the special motion to strike, or anti-SLAPP motion, is appealable. (Code Civ. Proc., § 425.16, subd. (i), § 904.1, subd. (a)(13).)

All further statutory references are to the Code of Civil Procedure, unless otherwise specified.

duty to account and pay 50 percent of monies collected for the sale and commercial exploitation of those recordings. Defendants “unlawfully utilized the [recordings] without the permission of [Clinton] and without accounting or paying royalties to [Clinton].” Clinton sought, inter alia, a judicial declaration that he, and not Boladian, was the owner of all rights relating to the copyright interests and sound recordings comprising the Westbound Sound Recordings.

The original complaint also alleged Clinton’s ownership of the copyrights to musical works and sound recordings known as the Warner Brothers Sound Recordings or Warner Masters, consisting of recordings originally released by Warner Brothers on the albums “Uncle Jam Wants You,” “One Nation Under a Groove,” “Hardcore Jollies,” and “Electric Spanking of War Babies.”

On January 7, 2013, Stroock & Stroock & Lavan and Daniel Rozansky (Stroock) substituted into the case in place of Clough, who had suffered a series of heart attacks and strokes.

On January 7, 2013, the matter was before Judge Manuel L. Real on an order to show cause why the action should not be dismissed for lack of prosecution. Judge Real ordered the action dismissed without prejudice, with 30 days leave to file an amended complaint.

On February 6, 2013, Clinton, through the Stroock firm, filed a first amended complaint, which added Bridgeport as a defendant and narrowed the pleading to two causes of action: copyright infringement (17 U.S.C. § 501) and declaratory relief. The two remaining causes of action related only to ownership of the Warner Masters; the amended pleading omitted any claims relating to the Westbound Sound Recordings.

On April 1, 2013, less than three months after Stroock substituted into the case, Judge Real granted a defense motion to dismiss. Boladian and Westbound were dismissed for Clinton's failure to state a claim, and Bridgeport was dismissed for lack of personal jurisdiction.

On May 2, 2013, Judge Real signed and entered an order dismissing the underlying action with prejudice. The court ruled, *inter alia*, it lacked personal jurisdiction over Bridgeport; Clinton failed to state a claim for copyright infringement, as the amended complaint was completely devoid of facts concerning any specific instances of infringement; the declaratory relief claim was duplicative of the copyright infringement claim and was unnecessary; and Clinton was not entitled to further leave to amend.²

On May 31, 2013, Clinton filed a notice of appeal to the Ninth Circuit. On May 8, 2014, the Ninth Circuit dismissed Clinton's appeal for failure to file an opening brief.

2. *The instant action.*

a. *Boladian's complaint for malicious prosecution, defamation, and false light.*

On March 25, 2015, Boladian, Bridgeport, and Westbound filed suit against Clinton and his attorneys. As against Clinton, the complaint pled three causes of action, namely, malicious

² Boladian filed a motion for Rule 11 sanctions (Fed. Rules Civ. Proc., rule 11) against Clinton, Clough, and Rozansky, contending that Clinton and his counsel should be sanctioned because they pursued the action despite being advised that Clinton's claims were futile and frivolous. On May 6, 2013, Judge Real denied the motion.

prosecution, defamation, and false light invasion of privacy (false light).

With respect to malicious prosecution, Boladian alleged that the 2011 litigation terminated in Boladian's favor, Clinton brought the lawsuit with the knowledge that his claims were unfounded, and Clinton acted with the sole intention to harm Boladian by subjecting him to continuing litigation and forcing him to incur defense costs.

The defamation claim was based on Clinton's publication of his autobiography (the book) in October 2014. Boladian alleged the book was libelous on its face and gave the unequivocal impression to the reader that Boladian committed theft by wrongfully obtaining Clinton's music copyrights and stealing Clinton's farm in Michigan. The book also falsely accused Boladian of dishonest business practices, including paying individuals to lie, engaging in racketeering, and falsifying contractual documents, which was detrimental to Boladian's business and his reputation in the music industry. In the third cause of action, false light, Boladian alleged the book generated publicity about him that was false or misleading.

b. *Clinton's special motion to strike.*

Two months into the action, Clinton filed a special motion to strike, contending that all of Boladian's claims were subject to anti-SLAPP scrutiny, and that Boladian could not show a probability of prevailing on his claims against Clinton.

With respect to the cause of action for malicious prosecution, Clinton asserted: there was no favorable termination of the underlying action because the termination was not on the merits; there was no basis for finding the underlying action was brought without probable cause; and Boladian's

allegation of malice was too speculative to support a malicious prosecution claim.

Clinton also contended that Boladian qualifies as a limited purpose public figure, and therefore Boladian was required to prove by clear and convincing evidence that the allegedly defamatory statements were made with knowledge of their falsity or with reckless disregard for the truth.

Clinton's moving declaration stated the underlying action was dismissed before he could establish a nexus between his improper licensing claims and Boladian, but he and his counsel had a good faith belief that his claims were tenable and likely to succeed. Specifically, "Bridgeport's website appeared to offer my sound recordings for license, and a Funkadelic compilation CD on the 'Westbound UK' record label included recordings licensed by Plaintiff Westbound as well as three sound recordings whose copyrights I owned but had not licensed for use in that compilation. These appeared to be acts of infringement."

c. Boladian's opposition to the special motion to strike.

In opposition, Boladian contended he could establish a probability of success on each of the claims. With respect to his cause of action for malicious prosecution, the underlying litigation was pursued to a legal termination in his favor, the litigation was brought without probable cause, and the litigation was initiated with malice.

With respect to the defamation claim, Boladian asserted: he is not a public figure, there was no particular public controversy, and Boladian had not thrust himself to the forefront; even if he were a public figure, Clinton acted with actual malice;

and Clinton's statements were not rhetorical hyperbole or opinion.

The opposing papers were supported by the declarations of Boladian and his attorney, Paul Duvall, as well as numerous exhibits. Among other things, Boladian presented evidence that in 1972 and 1975, Clinton signed agreements which made clear that Westbound owned the Westbound Sound Recordings, and thus Clinton lacked probable cause in the underlying action to allege his ownership thereof. Boladian also presented evidence that Clinton had received royalty statements over the years, so that Clinton had no probable cause to allege that he never received any accountings from Westbound.

Boladian also denied as false the statements in Clinton's book that Boladian wrongfully exercised ownership over Clinton's compositions or recordings, wrongfully withheld money from him and other songwriters, or wrongfully sued third parties.

d. *Trial court's ruling.*

After taking the matter under submission, the trial court denied Clinton's special motion to strike in its entirety. With respect to the malicious prosecution claim, the court found Boladian had made a sufficient prima facie showing that he obtained a favorable termination in the underlying action, that Clinton lacked probable cause to pursue the underlying action, and that Clinton was motivated by malice. The court found it could be inferred that Clinton's 2011 lawsuit "was an improper attempt to harass Boladian and his companies, and nothing more," citing Clinton's lengthy litigation history against Boladian, as well as Clinton's posting of a "scathing declaration" about Boladian and his companies (the Peterer declaration) on

his website, and Clinton's republication of the declaration in his autobiography.

With respect to the defamation claim, the court found that Clinton had failed to cite any evidence that Boladian was a limited purpose public figure within the music industry. Also, because Boladian had always been the defendant, he had not voluntarily thrust himself into the public eye. Therefore, Boladian was not required to show malice to succeed on his defamation claim. The court found Clinton's statements "show a picture of Clinton's accusing Boladian of dishonesty and other impropriety," and could not be characterized "as protected hyperbole or opinion."³

Lastly, the trial court reasoned the analysis of the defamation claim was equally applicable to the analysis of the false light claim, with the same outcome.

Clinton filed a timely notice of appeal from the order denying his special motion to strike.

CONTENTIONS

Clinton contends that each cause of action against him arose out of his protected activity, and that Boladian failed to show a probability of prevailing on the merits of any of the claims.⁴

³ The trial court noted that Clinton had not argued that his book is protected by the privilege for a fair and true report of a judicial proceeding (Civ. Code, § 47, subd. (d)(1)), but commented that Clinton "would likely benefit" from asserting that privilege.

⁴ In his reply brief, Clinton also contends that a decision by Judge Kalin granting an anti-SLAPP motion by codefendant Simon & Shuster (S&S), the book's publisher, is entitled to collateral estoppel effect. This court has already ruled that it

DISCUSSION

1. *General principles.*

“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. [The Supreme Court has] described this second step as a ‘summary-judgment-like procedure.’ [Citation.] The 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.] ‘[C]laims with the requisite minimal merit may proceed.’ [Citation.]” (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384–385, fn. omitted.)

would disregard any arguments newly raised in Clinton’s reply brief. Clinton asserts he did not raise the issue earlier because he filed his opening brief in April 2016 and notice of settlement of S&S’s appeal was not filed until May 10, 2016. However, Clinton could have raised the issue of collateral estoppel in the opening brief which he filed in this matter on June 29, 2016. The docket reflects the April 2016 brief was premature, as the record was incomplete, and was not filed.

Our review of the trial court's order denying the special motion to strike is de novo. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3 (*Soukup*).)

2. *Clinton met his burden with respect to the first step of the anti-SLAPP analysis.*

There is no question that the malicious prosecution action against Clinton arose from Clinton's protected petitioning activity in bringing the underlying lawsuit against Boladian. (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 734–735 [malicious prosecution action necessarily arises from protected petitioning activity in filing the underlying lawsuit].)

Likewise, the defamation and false light claims against Clinton arose from Clinton's exercise of his right of free speech in publishing his autobiography. (§ 425.16, subd. (b)(1).)

Therefore, the issues before us relate solely to the second step of the analysis, namely, whether Boladian met his burden to establish a likelihood of prevailing on his claims. (§ 425.16, subd. (b)(1).)

3. *On the malicious prosecution claim, Boladian individually and Westbound met their burdens but Bridgeport did not.*

a. *Elements of the tort of malicious prosecution.*

As this court noted in *Downey Venture v. LMI Ins. Co.* (1998) 66 Cal.App.4th 478, 493, “ ‘Malicious prosecution is a disfavored action. [Citations.] This is due to the principles that favor open access to the courts for the redress of grievances.’ ” Therefore, “the elements of the tort have historically been carefully circumscribed so that litigants with potentially valid claims will not be deterred from bringing their claims to court by the prospect of a subsequent malicious prosecution claim.”

(*Sheldon Appel Co. v. Albert & Olier* (1989) 47 Cal.3d 863, 872 (*Sheldon Appel*).)

To establish “ ‘a cause of action for the malicious prosecution of a civil proceeding, a plaintiff must plead and prove that the prior action (1) was commenced by or at the direction of the defendant and was pursued to a legal termination in his, plaintiff’s, favor [citations]; (2) was brought without probable cause [citations]; and (3) was initiated with malice [citations].’ ” (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 676.)

b. *Boladian and Westbound showed they obtained a favorable termination in the underlying action, but Bridgeport, which was dismissed from the underlying action for lack of personal jurisdiction, failed to show the termination was favorable.*

We begin with the element of favorable termination. “ ‘[F]avorable’ termination does not occur merely because a party complained against has prevailed in an underlying action. While the fact he has prevailed is an ingredient of a favorable termination, such termination must further reflect on his innocence of the alleged wrongful conduct. If the termination does not relate to the merits—reflecting on neither innocence of nor responsibility for the alleged misconduct—the termination is not favorable in the sense it would support a subsequent action for malicious prosecution.” (*Lackner v. LaCroix* (1979) 25 Cal.3d 747, 751 (*Lackner*).)

Here, Boladian and Westbound, in resisting Clinton’s special motion to strike their cause of action for malicious prosecution, successfully made a prima facie showing with respect to the essential element of favorable termination. They showed that the dismissal in the underlying case reflected that

the underlying action lacked merit. (*Lackner v. LaCroix, supra*, 25 Cal.3d at p. 751.) The evidence showed that in the underlying action, on May 2, 2013, Judge Real entered an order dismissing Clinton’s first amended complaint with prejudice. Judge Real ruled that the first amended complaint “is completely devoid of facts concerning any specific instance of [copyright] infringement” and similarly, the declaratory relief claim “fails to state a plausible claim for relief and is dismissed with prejudice.” Judge Real’s ruling reflected the opinion “of the court . . . that the action would not succeed” (*Sierra Club Foundation v. Graham* (1999) 72 Cal.App.4th 1135, 1149), and therefore constituted a favorable termination as to Boladian and Westbound. (*Ibid.*)

However, as to Bridgeport, the May 2013 dismissal was for lack of personal jurisdiction.⁵ It is settled that “ ‘a dismissal . . . for lack of jurisdiction [citation omitted] not only is not on the merits, it is unreflective of the merits; neither the judgment of the court nor that of the prosecuting party on the merits is implicated in the dismissal.’ ” (*Lackner, supra*, 25 Cal.3d at p. 750.) Thus, Bridgeport failed to show it is capable of establishing that it obtained a favorable termination in the underlying action. Accordingly, the trial court should have granted Clinton’s motion to strike Bridgeport’s cause of action for malicious prosecution.

⁵ Once Judge Real found he lacked jurisdiction over Bridgeport, he could not have made any determination as to the merits of Clinton’s claims against Bridgeport. Therefore, Judge Real’s ruling that Clinton failed to state a claim for copyright infringement or for declaratory relief applied only to Boladian and Westbound, not to Bridgeport.

c. *Boladian and Westbound also met their burden to make a prima facie showing that Clinton lacked probable cause.*

To withstand Clinton's special motion to strike, Boladian and Westbound only had to make a "minimal showing of lack of probable cause." (*Roger Cleveland Golf Co., Inc. v. Krane & Smith, APC* (2014) 225 Cal.App.4th 660, 687, disapproved on other grounds by *Lee v. Hanley* (2015) 61 Cal.4th 1225, 1239; accord, *Navellier v. Sletten* (2002) 29 Cal.4th 82, 94.) Further, they were not required to establish that every claim in Clinton's underlying action was unsupported by probable cause. "Where a prior action asserted several grounds for liability, an action for malicious prosecution will lie if any one of those grounds was asserted with malice and without probable cause. (*Bertero v. National General Corp.* (1974) 13 Cal.3d 43, 55–57.)" (*Kreeger v. Wanland* (2006) 141 Cal.App.4th 826, 832.)

Clinton's original complaint in the underlying action alleged, inter alia: "76. Despite the absence of an agreement from [Clinton] for use of the Westbound Sound Recordings . . . , all of the named defendants utilized these masters, authorized others to use the sound recordings, or created and utilized imitation sound recordings," and did so "without accounting to or paying any royalties to Plaintiff." Thus, Clinton pled he did not enter into an agreement with Boladian for use of the Westbound Sound Recordings, and sought declaratory relief that he, Clinton, "is the owner of all rights relating to the copyright interests and/or renewal term copyrights in and to musical works and sound recordings comprising the Westbound Sound Recordings."⁶

⁶ We note these claims were omitted from the first amended complaint in the underlying action.

In opposing Clinton’s anti-SLAPP motion, Boladian made a prima facie showing that Clinton lacked probable cause to make these claims. Boladian presented documentary evidence that in 1972 and 1975, Clinton personally signed and entered into written agreements which gave Westbound exclusive rights to the Westbound Sound Recordings. The 1975 agreement specifically stated Westbound “shall retain in perpetuity the exclusive worldwide right, title and interest in and to all master recordings and the copyrights thereon”

Based thereon, Boladian made a prima facie showing that Clinton lacked probable cause to allege that he did not enter into an agreement with Boladian for use of the Westbound Sound Recordings, and that he, Clinton, and not Boladian, has exclusive rights to the Westbound Sound Recordings.

d. *Boladian and Westbound also met their burden to make a prima facie showing that Clinton acted with malice.*

“ ‘The ‘malice’ element of the malicious prosecution tort relates to the subjective intent or purpose with which the defendant acted in initiating the prior action” “The malice required in an action for malicious prosecution is not limited to actual hostility or ill will toward [the] plaintiff but exists when the proceedings are instituted primarily for an improper purpose. [Citations.]” [Citation.]’ (*Swat-Fame, Inc. v. Goldstein* [(2002)] 101 Cal.App.4th [613,] 633.)^[7] Although lack of probable cause alone does not automatically equate to a finding of malice, it is a factor that may be considered. (*Downey Venture v. LMI Ins. Co.*,

⁷ *Swat-Fame, Inc.* was disapproved on other grounds by *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532, fn. 7, and *Zamos v. Stroud* (2004) 32 Cal.4th 958, 973.

supra, 66 Cal.App.4th at pp. 498–499, fn. 29.) “[M]alice may still be inferred when a party knowingly brings an action without probable cause. [Citations.]” (*Swat-Fame, Inc. v. Goldstein*, *supra*, at p. 634,)” (*Ross v. Kish* (2006) 145 Cal.App.4th 188, 204, italics added (*Ross*)). For example, *Ross* found that malice could be inferred from the fact that the malicious prosecution defendant “knew [his] claims for breach of contract and legal malpractice lacked factual and legal support.” (*Ross, supra*, at p. 204.)

Here, Boladian and Westbound made a prima facie showing that Clinton *knew* he lacked probable cause to assert the claims discussed above. Boladian showed that Clinton was a signatory to the 1972 and 1975 agreements; therefore Clinton knew he lacked probable cause to deny having entered into an agreement with Boladian concerning the Westbound Sound Recordings, and also knew that he lacked probable cause to allege he has exclusive rights to those recordings. Thus, Boladian and Westbound made a sufficient prima facie showing with respect to the element of malice.

For these reasons, the trial court properly denied Clinton’s special motion to strike the malicious prosecution claim brought by Boladian and Westbound.

4. *On the defamation and false light claims, Boladian individually met his burden but Westbound and Bridgeport did not.*

a. *Boladian's complaint fails to state a cause of action for defamation or false light with respect to Westbound or Bridgeport; therefore, the corporate plaintiffs failed to show a probability of prevailing on these claims.*

Both the defamation claim and the false light claim were brought by “plaintiffs” collectively. However, the complaint only alleges that *Boladian's* reputation was harmed, and that the book generated publicity about *Boladian* that was “false or misleading.” The pleading does not set forth any facts to state a cause of action on behalf of the corporate plaintiffs for defamation or false light, does not allege any injury to them, and does not seek damages on their behalf. Thus, Westbound and Bridgeport failed to state a cause of action for defamation or false light.

Further, in opposition to Clinton's special motion to strike, there was no attempt to show that Westbound and Bridgeport could prevail on the defamation and false light claims; the opposition papers merely argued that *Boladian* could prevail. Accordingly, Clinton is entitled to an order striking these causes of action by Westbound and Bridgeport.

The remaining issues relate to the viability of Boladian's causes of action against Clinton for defamation and false light.⁸

⁸ We confine our discussion to the issues raised by Clinton in his opening brief, rather than addressing each element of the causes of action. Thus, for example, we do not address the trial court's ruling that the statements in Clinton's book could not be characterized “as protected hyperbole or opinion.” De novo review does not relieve an appellant of the burden to demonstrate legal error on appeal. (*Lewis v. County of Sacramento* (2001))

b. *No merit to Clinton’s contention that Boladian’s defamation claim is barred by the fair report privilege.*

Clinton contends Boladian cannot prevail on his defamation claim because Clinton’s book is a privileged, fair and true report on judicial proceedings.⁹ As noted in footnote 3, above, Clinton did not assert this theory below. Therefore, a threshold issue is whether the issue is properly before us.

“‘In general, whether a privileged occasion exists within the meaning of Civil Code section 47, subdivision (d), is for the court to decide; whether the report of the official proceedings itself is “fair and true,” provided reasonable minds could disagree as to the effect of the communication on the average reader or listener, is a question of fact for the jury.’ [Citation.] When, however, “there is no dispute as to what occurred in the judicial proceeding reported upon or as to what was contained in the report,’ the question is one of law. [Citations.]” (*Healthsmart Pacific, Inc. v. Kabateck* (2016) 7 Cal.App.5th 416, 431.)

Even assuming that in the instant case the applicability of the fair report privilege is a pure question of law, so as to be cognizable for the first time on appeal (*Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 998–999),

93 Cal.App.4th 107, 116; *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

⁹ Civil Code section 47, subdivision (d)(1) defines a “privileged publication or broadcast” to include one made “[b]y a fair and true report in, or a communication to, a public journal, of (A) a judicial, (B) legislative, or (C) other public official proceeding, or (D) of anything said in the course thereof, or (E) of a verified charge or complaint made by any person to a public official, upon which complaint a warrant has been issued.”

the issue is still not properly before us because it has not been adequately briefed. In his opening brief, Clinton does not demonstrate that the statements being challenged by Boladian accurately described the substance of judicial proceedings. (See, e.g. *Colt v. Freedom Communications, Inc.* (2003) 109 Cal.App.4th 1551, 1558–1560.) Instead, Clinton simply directs us to the memorandum of points and authorities which codefendant S&S filed below in support of its own special motion to strike. However, Clinton may not simply incorporate by reference arguments made in papers filed by another party below, in lieu of briefing the issue on appeal. (*Garrick Development Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320, 334.) We do not consider such arguments. (*Ibid.*)

Thus, there is no merit to Clinton’s contention that Boladian cannot prevail because the book is privileged as a fair and true report of judicial proceedings involving Boladian.

c. *No merit to Clinton’s contention that the entire defamation claim must be stricken because it targets protected activity.*

Next, Clinton argues the entire defamation claim must be stricken because the gravamen of Boladian’s cause of action targets protected activity. The contention is meritless.

The significance of protected activity is that it triggers anti-SLAPP scrutiny. (See Discussion, § 1, *ante.*) Merely because the cause of action arises out of protected activity does not entitle Clinton to a grant of the special motion to strike.

d. *No merit to Clinton's malice argument; Boladian's status as a limited public figure presents a question of fact which cannot be resolved at the anti-SLAPP stage.*

Clinton contends the trial court erred in finding that malice for purposes of malicious prosecution suffices to show actual malice for purposes of defamation. He goes on to argue that the defamation claim must be stricken because Boladian failed to show a probability of prevailing under the actual malice standard. These arguments are unavailing.

(1) *General principles.*

“In order to prevail on a libel action, public figures must prove, by clear and convincing evidence, that the libelous statement was made with actual malice—with knowledge that it was false or with reckless disregard for the truth. (*Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 253.) There are two types of public figures: ‘The first is the “all purpose” public figure who has “achieve[ed] such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts.” The second category is that of the “limited purpose” or “vortex” public figure, an individual who “voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues.” ’ ” (*Sipple v. Foundation for Nat. Progress* (1999) 71 Cal.App.4th 226, 247.)

In order to characterize a plaintiff as a limited purpose public figure, there must be a public controversy, which means the issue was debated publicly and had foreseeable and substantial ramifications for nonparticipants; the plaintiff must have undertaken some voluntary act through which he or she sought to influence resolution of the public issue; it is sufficient

that the plaintiff attempts to thrust himself or herself into the public eye; and finally, the alleged defamation must be germane to the plaintiff's participation in the controversy. (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 24.) Whether a plaintiff is a limited public figure "is a mixed question of law and fact." (*Denney v. Lawrence* (1994) 22 Cal.App.4th 927, 933.)

(2) *Boladian made a sufficient prima facie showing that he is not a limited public figure.*

Clinton asserts Boladian is a limited purpose public figure in the music world because Boladian had been involved in legal battles with Clinton and others over copyrights, "which have been the subject of extensive public debate with substantial ramifications for hip-hop artists."¹⁰ Clinton relies, inter alia, on Boladian's allegations in a Michigan lawsuit that the disputes and litigation between Clinton and Boladian concerning Clinton's music are "well known to virtually everyone in the music business, and in particular to those persons involved in the rap music business."

Boladian disputes that he is a limited public figure. His declaration stated that he and his companies have eschewed publicity. He also argues that in the prior lawsuits with Clinton, he was always the defendant. Thus, Boladian denies that he undertook a voluntary act to influence resolution of a public issue, or that he thrust himself into the public eye. (*Gilbert v. Sykes*, *supra*, 147 Cal.App.4th at p. 24.)

¹⁰ The trial court found that Clinton "fail[ed] to cite to evidence" to support his characterization of Boladian as a limited purpose public figure.

This court cannot, at the anti-SLAPP stage, weigh the evidence in order to determine whether or not Boladian qualifies as a limited public figure. (*Baral v. Schnitt*, *supra*, 1 Cal.5th at pp. 384–385.) Based on the record presented, we simply conclude that Boladian has made a prima facie showing that he is not a limited purpose public figure, and therefore was not required to show actual malice to withstand Clinton’s special motion to strike.

e. *Boladian’s false light claim.*

“False light is a species of invasion of privacy, based on publicity that places a plaintiff before the public in a false light that would be highly offensive to a reasonable person, and where the defendant knew or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the plaintiff would be placed.” (*Price v. Operating Engineers Local Union No. 3* (2011) 195 Cal.App.4th 962, 970.)

Clinton argues the false light claim “falls or rises” with the defamation claim, and that the false light claim is not tenable for the same reasons as the defamation claim. Having rejected Clinton’s contentions with respect to the defamation claim, we perceive no error in the trial court’s denial of Clinton’s special motion to strike Boladian’s false light claim.

DISPOSITION

The order denying Clinton's special motion to strike is reversed in part; the trial court is directed to strike Bridgeport's cause of action for malicious prosecution and Bridgeport's and Westbound's causes of action for defamation and false light invasion of privacy. In all other respects, the order is affirmed. The parties shall bear their respective costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL
REPORTS**

EDMON, P. J.

We concur:

LAVIN, J.

JOHNSON (MICHAEL), J.*

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