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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JENNIFER LEE,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES POLICE
DEPARTMENT et al.,

Defendants and
Respondents.

B281358

(Los Angeles County
Super. Ct. No. BC598205)

APPEAL from order of the Superior Court of Los Angeles County, Frederick Carl Shaller, Judge. Affirmed.

Law Offices of Linda Louise Scott and Linda Louise Scott, for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Blithe S. Bock, Assistant City Attorney, Wendy Shapero, Deputy City Attorney, for Defendants and Respondents.

Plaintiff and appellant Jennifer Lee challenges the trial court's grant of the City of Los Angeles Police Department (LAPD), Sergeant Ietia Eston, and Officer Neal Oku's special motion to strike Lee's complaint (anti-SLAPP motion)¹ under Code of Civil Procedure section 425.16.² Lee was a detective for the LAPD. Her family filed a complaint regarding other officers' actions during an eviction. When questioned about the incident, Lee's responses led the investigator to doubt her veracity, resulting in an internal investigation. Lee was terminated by the LAPD for being untruthful, but later exonerated of all wrongdoing and reinstated by the Board of Rights. Lee sued defendants for misconduct relating to her investigation, alleging racial discrimination (Gov. Code, § 12940, subd. (a)), retaliation on the basis of race and disability (Gov. Code, § 12940, subd. (j)), deprivation of rights (Civ. Code, §52.1), intentional infliction of emotional distress, negligent infliction of emotional distress, harassment on the basis of medical condition (Gov. Code, § 12900 et seq.), and fraud. Defendants filed a special motion to strike the complaint. The trial court granted the motion, finding that Lee's claims of misconduct arose from official proceedings authorized by

¹ "SLAPP is an acronym for strategic lawsuit against public participation." (*Kenne v. Stennis* (2014) 230 Cal.App.4th 953, 957, fn. 3.)

² All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

law and were therefore protected under section 425.16, subdivision (e), and that Lee failed to demonstrate a probability of success on her claims.

We affirm.

FACTS AND PROCEDURAL BACKGROUND

The Complaint

The operative second amended complaint alleges that in March 2013, LAPD officers responded to a location where an eviction was underway at a commercial facility operated by Lee's father. During the eviction, a relative called Lee for advice because an officer had pushed her father. Lee spoke to a sergeant at the scene over the phone and provided him with information regarding the eviction. Afterwards, Lee's family wished to file a complaint against the officers who conducted the investigation, but expressed to Lee that they were hesitant due to her position with the LAPD. Lee assured her family that it was their right to file a complaint and that they should do so if they felt it was appropriate.

During LAPD's investigation of the complaint, Lee was ordered to present herself for questioning by internal affairs. Eston, who conducted the investigation, interviewed Lee and concluded that Lee had falsely stated she was not present at the scene during the eviction, and that discipline was warranted. Lee contested the allegation and offered to provide proof of her whereabouts, but Eston did not take

steps to confirm Lee's account and instead attempted to discredit her, at one point leading a witness in identifying Lee as being present at the eviction. Because of the accusations against her, Lee was subjected to humiliation, called a liar, and told that her punishment was insufficient. She was ultimately suspended without pay, and forced to relinquish her badge and gun.

On or about January 15, 2015, a Board of Rights hearing was held to determine whether the LAPD's decision to terminate Lee was warranted. Both Eston and Oku testified. The Board of Rights issued a directed verdict in Lee's favor. It found that Oku was not credible and that the investigation was "flawed at best." The Board exonerated Lee of all wrongdoing and reinstated her with back pay. She was unable to return to work, however, as she suffered anxiety and depression as a result of defendants' actions.

First Cause of Action - Racial Discrimination

Lee claimed that she was discriminated against on the basis of race in violation of Government Code section 12940, subdivision (a). In her 20 years with the LAPD, she had seen black officers undergo disciplinary proceedings for alleged wrongdoing, while claims against white officers were dropped. She alleged the LAPD intentionally subjected her to the same treatment, motivated in part by her family's race-based complaint.

Second Cause of Action - Retaliation on the Basis of Race and Disability

Lee also alleged discrimination under Government Code section 12940, subdivision (j), due to both her race and her debilitating anxiety and depression. She claimed that while she was on disability leave, LAPD intentionally and repeatedly harassed her by ordering her to appear for interviews in conjunction with investigations of her conduct.³

Third Cause of Action - Deprivation of Constitutional Rights

The second amended complaint alleged that defendants deprived Lee of the exercise and enjoyment of her rights by intimidating her in violation of Civil Code section 52.1. When Lee expressed her belief that the LAPD was retaliating against her for her family's complaint, she was told that she could be held accountable for failing to file the complaint herself if she believed that there was wrongdoing during the eviction.

Subsequently, Lee's superiors micromanaged her work, and she was unjustly criticized. Lee's supervisor, Lieutenant

³ Lee made no specific arguments with respect to race-based retaliation, but incorporated facts from the previous cause of action.

Oka,⁴ told Lee several times that based on the information in the report, her punishment was inadequate, and that he would have imposed a more severe penalty. Lieutenant Oka called Lee a liar in front of her detective supervisor and a sergeant in a case disposition discussion. Lee was informed that the allegations against her were sustained and that she could no longer work as a detective. She was escorted from her desk, and relieved of her badge and gun. Lee alleged that she was unjustly forced to choose between accepting a lengthy suspension and losing her job. Defendants' wrongful and malicious misconduct deprived her of the property right of employment and her freedom of speech.

Fourth Cause of Action - Intentional Infliction of Emotional Distress

Lee claimed that Eston's mishandling of the investigation and attempts to discredit and humiliate her were extreme and outrageous, as well as intentional and/or reckless, as was Oku's knowingly false testimony before the Board of Rights. Eston and Oku intended to cause Lee emotional distress or acted with reckless disregard of the probability that their actions would cause her emotional distress. As a result, Lee suffered anxiety and depression, and could no longer perform her job duties.

⁴ Lieutenant Oka is not the same person as Officer Oku.

Fifth Cause of Action - Negligent Infliction of Emotional Distress

The complaint alleged that the LAPD and Eston had a duty to adequately investigate Lee's statements regarding her whereabouts during the eviction, but failed to do so. Defendants' negligence caused Lee emotional distress, anxiety, and depression, such that she could no longer perform her job duties.

Sixth Cause of Action - Harassment on the Basis of Medical Condition

After Lee was reinstated but still on medical leave, defendants harassed her by forcing her to appear for an interview concerning a complaint filed against her. LAPD employees also repeatedly called Lee with respect to a complaint for damages she filed against the City of Los Angeles and ordered her to appear at work to discuss alleged work issues, despite her medical condition. The constant calls created a hostile work environment, which the LAPD failed to take reasonable steps to prevent.

Seventh Cause of Action – Fraud

Eston and Oku knowingly provided false information concerning Lee, and Eston included false information in the report against her. Oku falsely stated that Lee was at the scene of the eviction. Eston attempted to lead a witness who

had been at the scene of the eviction after the witness described a person whose appearance differed from Lee. Eston failed to take simple steps to adequately investigate the allegations against Lee. The LAPD knew the information was false and deficient, yet approved Eston's report.

Special Motion to Strike

Defendants filed a special motion to strike all causes of action under section 425.16. They argued that the gravamen of Lee's lawsuit related to internal investigations of her conduct and the Board of Rights hearing, which were official proceedings authorized by law and entitled to anti-SLAPP protection under section 425.16, subdivisions (e)(1) and (e)(2).

Defendants argued that Lee could not meet her burden of demonstrating a probability of success on her claims. Pursuant to Government Code sections 815.2 and 821.6, the City of Los Angeles and its employees had absolute immunity from liability for injury caused by instituting or prosecuting an administrative proceeding within the scope of their employment—including investigations—even if they acted maliciously and without probable cause. Defendants were also immune from claims arising from the Board of Rights hearing as privileged publications or broadcasts in the initiation or course of a proceeding authorized by law, regardless of whether the publications were fraudulent,

perjurious, unethical, or illegal under Civil Code section 47, subdivision (b).

The special motion to strike alleged that Lee failed to properly plead all of the seven causes of action in the complaint. As relevant here, defendants argued the third cause of action for deprivation of constitutional rights pursuant to Civil Code section 52.1 required a showing of violence or threat of violence, neither of which were alleged in the complaint.

The special motion to strike was supported by the declaration of Commander Dennis Kato. Attached to Commander Kato's declaration were the LAPD Management Rules and Procedures, and a Military Endorsement for CF No. 14-000515 executed by Kato, which increased the penalty in Lee's case to a Board of Rights hearing and recommended termination.

Opposition to the Special Motion to Strike

Lee opposed the special motion to strike, arguing that her claims did not arise from protected activity under section 425.16, and that the claims possessed the requisite minimal merit to survive the motion. Lee argued that some of the misconduct against her did not occur in the context of an investigation or was perpetrated by persons who were not involved in investigations, and was therefore unprotected. Examples of this misconduct were Lieutenant Oka's remarks, the deactivation of her key card, her removal from

her desk and placement in another area, and defamatory remarks made to her by a union representative.⁵

The opposition maintained that Lee's statements regarded her own family members rather than "random" members of the public, and were therefore not a matter of public interest. Lee further asserted that the claims were not eligible for protection under Civil Code section 47, subdivision (c), because defendants acted with malice.⁶ Lee argued that it was contrary to the purpose of the anti-SLAPP statute to allow defendants to defame, harass, and demean an officer who had done nothing wrong. Finally, she challenged the motion as untimely, arguing that it was filed more than 60 days after the first amended complaint.

The opposition to the special motion was supported by Lee's declaration, counsel's declaration, and a Rationale of Findings by the LAPD's Internal Affairs Group, dated January 6, 2015.

⁵ Neither the deactivation of Lee's key card nor the union representative's remarks were included in the second amended complaint.

⁶ Defendants had not argued privilege under Civil Code section 47, subdivision (c), but rather under Civil Code section 47, subdivision (b).

Reply in Support of the Special Motion to Strike

Defendants' reply reiterated that Lee's claims arose from official proceedings authorized by law, which Lee failed to address in her opposition. Lee offered no facts in support of the causes of action alleged in the complaint, and did not address the arguments that defendants were immune from prosecution under Government Code Section 815.2 and 821.6, or that their statements were privileged under Civil Code section 47, subdivision (b). The special motion to strike was filed within 60 days of the second amended complaint, and was therefore timely.

Trial Court's Ruling

The trial court found the special motion was timely filed within 60 days of the filing of the second amended complaint. The court found that none of the facts alleged misconduct that occurred prior to the first investigation. The gravamen of Lee's causes of action related to either internal investigations of Lee's conduct or to her hearing before the Board of Rights. The claims therefore arose from protected activity under section 425.16, subdivision (e). Because the investigations were matters pending before official proceedings authorized by law, they were protected by the official nature of the proceedings under section 425.16, subdivision (e)(1). The alleged misconduct relating to communications outside the official proceedings was

protected under section 425.16, subdivision (e)(2), as it was sufficiently related to an issue under consideration or review in any official proceeding authorized by law.

The trial court ruled that Lee failed to make a showing of a probability of success on her claims. Defendants had absolute immunity from suits arising from the internal investigations and Board of Rights hearing under Government Code sections 815.2 and 821.6. Government Code section 815.2 provides that public entities are not liable for injury resulting from an act or omission of an employee who is immune from liability. Under Government Code section 821.6, public employees are not liable for injury caused by instituting or prosecuting judicial or administrative proceedings within the scope of their employment, even if the employee acts maliciously or without probable cause. Additionally, defendants were immune from claims arising from the Board of Rights hearing by the litigation privilege set forth in Civil Code section 47, subdivision (b), which protects publications or broadcasts made in the initiation or course of a proceeding authorized by law, regardless of whether the publications are fraudulent, perjurious, unethical, or illegal. The court noted that Lee had not addressed any of these arguments.

Lee timely appealed.

DISCUSSION

““A SLAPP suit—a strategic lawsuit against public participation—seeks to chill or punish a party’s exercise of constitutional rights to free speech and to petition the government for redress of grievances. [Citation.] The Legislature enacted Code of Civil Procedure section 425.16—known as the anti-SLAPP statute—to provide a procedural remedy to dispose of lawsuits that are brought to chill the valid exercise of constitutional rights. [Citation.]” [Citation.]’ (*Rohde v. Wolf* (2007) 154 Cal.App.4th 28, 34.) ‘The goal [of section 425.16] is to eliminate meritless or retaliatory litigation at an early stage of the proceedings.’ (*Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 806.) That section 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.’ (§ 425.16, subd. (b)(1).)” (*Charney v. Standard General, L.P.* (2017) 10 Cal.App.5th 149, 156.)

“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. (*Taus v. Loftus* (2007) 40 Cal.4th 683, 712 [.]) 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. [Our Supreme Court has] described this second step as a ‘summary-judgment-like procedure.’ (*Id.* at p. 714.) 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. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 819–820 [.] ‘[C]laims with the requisite minimal merit may proceed.’ (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 94 [.]’ (*Baral v. Schnidt* (2016) 1 Cal.5th 376, 384–385, fn. omitted.) We independently review the trial court’s grant of an anti-SLAPP motion. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.)

Arising From Protected Activity

A cause of action “arises from” protected activity when the “cause of action itself” is “*based on*” protected activity. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78; *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1114 [“arises from” means “based upon”].) Whether a cause of action is itself based on protected activity turns on whether its ““*principal thrust or gravamen*”” is protected

activity—that is, whether the “core injury-producing conduct” warranting relief under that cause of action is protected activity. (*Colyear v. Rolling Hills Community Assn. of Rancho Palos Verdes* (2017) 9 Cal.App.5th 119, 134.) “[I]n ruling on an anti-SLAPP motion, courts should consider the elements of the challenged claim and what actions by defendant supply those elements and consequently form the basis for liability.” (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1063 (*Park*).)

As relevant here, a cause of action arising from an act of a person in furtherance of the person’s right of petition or free speech as defined in section 425.16 includes “any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law,” under subdivision (e)(1), and “any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law,” under subdivision (e)(2).

Lee contends that defendants failed to meet the arising from protected activity requirement because “the thrust or gravamen of the matter is the consequences of defamatory statements recklessly made by police officers” “made in the course of the garden variety activities of the officers and not in the course of any judicial or similar proceeding so as to trigger the anti-SLAPP statute.” The LAPD’s decision to micromanage Lee, remove her from her work area, and force her to surrender her gun and badge directly related to the

first internal investigation of Lee's conduct. We concur with the trial court that "[t]he principal thrust of the [second amended complaint] is that the internal investigation of Plaintiff had a wrongful motive and was harassing. The claim of harassment on the basis of medical condition is not linked to that particular investigation, but is linked to other internal proceedings."

Lee likens her case to *Anderson v. Geist* (2015) 236 Cal.App.4th 79 (*Anderson*). *Anderson* is readily distinguishable. In *Anderson*, the plaintiff brought an action against two sheriff's department deputies, alleging they unlawfully entered her residence on two occasions, attempted to arrest her daughter pursuant to a bench warrant that had been recalled, and made defamatory statements to her neighbors. The trial court denied the deputies' anti-SLAPP motion, and the Court of Appeal affirmed, holding that the deputies' actions during the execution of a misdemeanor arrest warrant were not protected under section 425.16, subdivision (e)(4).

The *Anderson* court explained that "[a]t base, the execution of a warrant is not an exercise of rights by the peace officer; it is the performance of a mandatory duty, at the direction of the court. (See *Barnett v. State Farm General Ins. Co.* (2011) 200 Cal.App.4th 536, 546 ["A search warrant is not an invitation that officers can choose to accept, or reject, or ignore, as they wish, or think, they should. It is an order of the court."].) Because peace officers have no discretion in whether or not to execute a warrant

issued by the court, it seems unlikely that a lawsuit asserting claims arising from such activity could have the chilling effect that motivated the Legislature to adopt the anti-SLAPP statute, or that extending protections of the anti-SLAPP statute to such activity would serve the statute's goals. (See § 425.16, subd. (a).)"⁷ (*Anderson, supra*, 236 Cal.App.4th at p. 87.)

In contrast, the claims in the instant case arise from the internal affairs investigation of Lee's conduct. The LAPD exercises discretion with respect to whether an officer's conduct warrants investigation. *Anderson* is inapposite.⁸

Probability of Success

Because the challenged claims arise from protected activity, the burden shifts to Lee to demonstrate a

⁷ The *Anderson* court distinguished the claims before it from claims arising in connection with *procurement* of a bench warrant, which are protected activity under section 425.16. (*Anderson, supra*, 236 Cal.App.4th at p. 87.) It also based its decision in part on defendants' failure to argue that Anderson's claims "concern[ed] a topic of widespread public interest and contribute[d] in some manner to a public discussion of the topic." [Citations.] (*Ibid.*)

⁸ Lee does not argue that her claims arise from protected activity under *Park, supra*, 2 Cal.5th 1057.

probability of success on her claims. Lee has not met her burden. In a footnote of her opening brief, she cursorily states that “since the police officers named in this lawsuit are not immune from prosecution [Government Code section 815.2] does not apply.” She does not offer any argument as to why the officers are subject to liability, and makes no further effort to rebut defendants’ argument that LAPD is immune from suit. Lee also ignores defendants’ contention that their statements in the course of the Board of Rights hearing are privileged. She fails to discuss the merits of her claims individually, and neglects to cite authority in support of her blanket allegation that the causes of action in the complaint have the requisite minimal merit, thus forfeiting her arguments on appeal. (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655–656 [judgment is presumed correct and burden is on appellant to demonstrate otherwise by factual analysis and citation to appropriate authority].)

Even if Lee had not forfeited her arguments on appeal, defendants would prevail, as they have demonstrated that they are immune from liability pursuant to Government Code sections 815.2 and 821.6, and their conduct is protected by the litigation privilege in Civil Code section 47, subdivision (b).⁹ The only cause of action to which immunity

⁹ Defendants also argue that Lee has failed to appeal the trial court’s order sustaining their evidentiary objections to her declaration. We agree, but do not discuss the objections. Even assuming the truth of Lee’s declaration in

and privilege may arguably not apply is the allegation that defendants deprived Lee of her constitutional rights in violation of Civil Code 52.1, but she cannot prevail on that claim because the complaint does not allege violence or the threat of violence.

Government Code section 815.2, subdivision (b) provides that “[e]xcept as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability.” Under Government Code section 821.6, “[a] public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause.” Civil Code section 47, subdivision (b), privileges publications made “[i]n any . . . official proceeding authorized by law” “[T]he privilege is absolute, a complete defense regardless of malice.” (*Laffer v. Levinson, Miller, Jacobs & Phillips* (1995) 34 Cal.App.4th 117, 122.)

As to each cause of action, Eston was either instituting or prosecuting judicial or administrative proceedings within the scope of her employment, or making statements in a proceeding authorized by law. She cannot be held liable even if she acted maliciously, as Lee alleges. Any statements that Oku made at the Board of Rights hearing

its entirety, she has not established that her claims possess minimal merit.

are likewise privileged. Because Eston and Oku cannot be held liable, LAPD is also protected from liability for their actions.

Finally, even if defendants were not immune or privileged with respect to the third cause of action, Lee did not meet her burden. Pursuant to Civil Code section 52.1, “[t]he plaintiff must show ‘the defendant interfered with or attempted to interfere with the plaintiff’s legal right by threatening or committing violent acts.’ (*Doe v. State[of California]* (2017) 8 Cal.App.5th 832,) 842; see *Austin B. v. Escondido Union School Dist.* (2007) 149 Cal.App.4th 860, 881–882; see generally *Jones v. Kmart Corp.* (1998) 17 Cal.4th 329, 334.) Speech is insufficient to establish the requisite threat unless it includes threat of violence. (*Shoyoye [v. County of Los Angeles]* (2012) 203 Cal.App.4th 947], 958, citing Civ. Code, § 52.1, subd. (j).)” (*Julian v. Mission Community Hospital* (2017) 11 Cal.App.5th 360, 395.) The complaint did not allege threats or violence, and therefore lacks the requisite merit to proceed.

Following our independent review, we affirm the trial court’s grant of the anti-SLAPP motion. Defendants met their burden of establishing that Lee’s claims arose from protected activity under section 425.16, and Lee has not provided the minimal proof necessary to demonstrate that she has a probability of success on her claims.

DISPOSITION

The order granting defendants' special motion to strike the complaint is affirmed. Defendants are awarded costs on appeal.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

RAPHAEL, J.*

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