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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

RICHARD GIBSON, Plaintiff and Respondent, v. JUSTIN SWINGLE, Defendant and Appellant.	B267809 (Los Angeles County Super. Ct. No. LC082899)

APPEAL from an order of the Superior Court of Los Angeles County, Huey P. Cotton, Judge. Affirmed as modified.

Justin Swingle, in pro. per., for Defendant and Appellant.

Richard Gibson, in pro. per., for Plaintiff and Respondent.

Richard Gibson, an attorney, filed this action alleging Justin Swingle invaded his privacy and defamed him in Internet posts. The trial court granted summary judgment to Gibson and issued a permanent injunction enjoining Swingle from posting anything about Gibson on the Internet.

We will order the judgment modified in a minor respect, and affirm it as modified.

BACKGROUND

For several years, Swingle anonymously posted messages about Gibson on community discussion boards at Craigslist.org and on Swingle's blog at www.richardhilarygibson.blogspot.com. Swingle falsely asserted that Gibson used drugs, has threatened violence, made racist and anti-Semitic comments, and solicited murder.

In September 2008, Gibson filed a complaint against unidentified defendants, alleging defamation and invasion of privacy and seeking damages and injunctive relief. On October 23, 2008, Gibson amended the complaint to substitute Swingle for a Doe defendant. The complaint named Swingle in the first, second, and fifth causes of action, for defamation, invasion of privacy, and injunctive relief, respectively, and named other defendants in the third and fourth causes of action, also for defamation and invasion of privacy.

In November 2008, the trial court granted a preliminary injunction against Swingle, enjoining him not to post defamatory remarks about Gibson on the Internet. In May 2009, the court denied Swingle's special motion to strike, an order we affirmed. (*Gibson v. Swingle* (May 28, 2010, B217082 [nonpub. opn.]).)

On September 13, 2011, Gibson deposed Swingle. During the deposition, Swingle admitted that he posted on the Internet

that Gibson was racist and anti-Semitic, threatened others with violence, and used drugs. For example, Swingle stated, "I accused you of being racist," and "I've accused you of being an anti-Semite and posting Nazi pictures." When Gibson asked, "Have you published statements on the Internet stating that I have threatened people with violence?" Swingle answered, "Yes. Yes." When asked, "Have you posted statements on the Internet accusing me of using illegal drugs?" Swingle answered that he "referenced posts" that he knew that were Gibson's where the author stated he "used meth and whatever else drug you use." When asked whether he published a statement on the Internet that Gibson had solicited the murder of a third person, Swingle answered, "Yes." Swingle often referred to Gibson by his full name, Richard Hilary Gibson, and would ask readers, "Would you want the poster of this to be your lawyer?" Swingle admitted to sending emails about Gibson to third parties and to the NAACP.

Swingle believed the matters he published were true because anonymous individuals on the Internet said they were, and he believed those individuals were Gibson acting incognito.

When Gibson asked, "What is it going to take to get you to stop publishing attacks on me on the internet?" Swingle responded, "You can't."

On December 16, 2011, Swingle filed for bankruptcy protection.

On April 10, 2012, Gibson dismissed his first through fourth causes of action, leaving only the fifth cause of action, for injunctive relief.

In 2013, the bankruptcy court discharged Swingle's potential debt to Gibson arising from this lawsuit.

In the meantime, from 2010 to 2014, other substantial law and motion practice occurred, including entry of default against Swingle, vacation of the default, summary adjudication in favor of Gibson and entry of a permanent injunction, and the setting aside of that judgment.

Then, on December 1, 2014, Gibson moved for summary judgment. In support of the motion, he offered Swingle's admissions during deposition and his own declaration that Swingle's accusations against him were untrue, that many clients told him they saw Swingle's attacks, and that as a result of them he lost income.

In opposition to the motion, Swingle stated he "openly admitted" that he "exposed Gibson's conduct as a racist hate monger," but his accusations were "truthful and supported with documentation." Swingle represented that Gibson "aggressively and unrelentingly harassed and stalked him" and "threatened to murder" him (presumably all on the Internet). In support of the opposition, Swingle declared the substance of the accusations about Gibson is true, and he offered 157 exhibits consisting of unauthenticated printouts of Internet pages purporting to substantiate the accusations by showing Gibson's bad behavior on the Internet.

The trial court granted summary judgment. It awarded no compensatory damages but permanently enjoined Swingle "from ever publishing any statements about Richard Gibson on Craigslist or any other place on the Internet."

On June 19, 2015, the trial court denied Swingle's motion for new trial.

Swingle timely appealed.

DISCUSSION

I. Gibson's Fifth Cause of Action

Preliminarily we note that some confusion exists as to how much of Gibson's complaint survived to the time he moved summary judgment. The trial court's order states that Gibson "is awarded judgment on his first and second causes of action, for defamation and invasion of privacy—false light, as well as his fifth cause of action, for permanent injunction." However, as Swingle correctly argues, Gibson dismissed his first through fourth causes of action on April 10, 2012, leaving only the fifth cause of action.

Swingle argues summary judgment could not be granted as to the fifth cause of action because it seeks injunctive relief with no predicate, the other causes of action having been dismissed. Gibson argues he did not dismiss those other causes of action, but merely "stopped asking for monetary relief" due to Swingle's bankruptcy.

A cause of action comprises facts giving rise to a plaintiff's primary right and the defendant's corresponding duty, together with "facts which constitute the defendant's delict or act of wrong. [Citation.]'" (*Tensor Group v. City of Glendale* (1993) 14 Cal.App.4th 154, 160.) Once a plaintiff states facts establishing a right, a corresponding duty, and an act of wrong, he may seek one or more appropriate remedies, such as damages, declaratory relief, and injunctive relief.

In pleading, a plaintiff will commonly set forth each cause of action under a separate heading. Plaintiffs also commonly but unnecessarily seek discrete *remedies* under separate headings (sometimes unhelpfully titled "Cause of Action").

Here, Gibson alleged two causes of action against Swingle, for defamation and invasion of privacy, seeking damages as to each. He then alleged another "cause of action," titled "Injunctive Relief." This was unnecessary and technically incorrect, because injunctive relief is merely a remedy. Gibson had only two real causes of action against Swingle, not three.

Although unnecessary, it was not improper for Gibson to set out a separate request for relief in its own "cause of action." The purpose of a complaint is to give notice to the defendant about the claims brought against him or her. Requesting different remedies under separate headings does not mislead a defendant about the plaintiff's claims.

If at some point the predicate claims are dismissed, as occurred here, then the "remedy" claim would also be dismissed unless it incorporates the prior claims or alleges other facts justifying relief.

On April 10, 2012, Gibson filed a document entitled "Request for Dismissal." In it, he requested that the court clerk "dismiss this action as follows: [¶] . . . [¶] . . . "Causes of action one, two, three and four only." Dismissal was "entered as requested."

Gibson's fifth cause of action, which was not dismissed, provided that all "allegations contained in [all preceding paragraphs] are hereby realleged as though fully stated herein."

It is therefore true, as Swingle argues, that Gibson dismissed his first and second causes of action, and the trial court incorrectly entered judgment on them in Gibson's favor. However, the causes of action nevertheless survived because Gibson's fifth cause of action incorporated them. Therefore, Gibson alleged, by way of incorporation, facts establishing his

right not to be defamed, Swingle's corresponding duty not to defame him, and Swingle's breach of that duty. The court could properly enter judgment on this claim.

II. Bankruptcy Stay

Swingle petitioned for bankruptcy protection on December 16, 2011. He received a discharge in 2013. Swingle argues the court's order violated a bankruptcy stay. He is incorrect.

A bankruptcy petition operates as an automatic litigation stay. (11 U.S.C. § 362(a)(1).) A discharge of bankruptcy operates as an injunction against any action to collect discharged debt. (11 U.S.C. § 524(a)(2).) "As a general rule, when a bankruptcy discharge is granted, the automatic stay of proceedings against the debtor is replaced by a statutory injunction set forth in 11 U.S.C. § 524. However, the permanent injunction prohibits actions only with respect to dischargeable debts, and does not apply to nondischargeable debts." (*Johnson v. JP Morgan Chase Bank* (E.D. Cal. 2008) 395 B.R. 442, 449.)

Here, Gibson sought and the trial court awarded only injunctive relief. Injunctive relief is not a dischargeable debt. Therefore, once Swingle's bankruptcy was discharged, Gibson was entitled to pursue this action against him.

III. Sufficiency of Evidence

Swingle argues the trial court erred in granting summary judgment because the evidence was insufficient to establish lack of a disputed issue of material fact. The argument is without merit.

A. Standard of Review

In ruling on a plaintiff's motion for summary judgment, the trial court must determine whether the motion presents material facts sufficient to establish there is no defense to the action

because each element of the action has been proven. (Code Civ. Proc., § 437c, subds. (a), (c) & (p)(1).) If the plaintiff makes such a prima facie showing, the defendant's opposition must demonstrate the existence of one or more disputed issues of material fact as to the cause of action or any defense thereto. (*Id.* at subd. (p)(2).) Declarations supporting the motion and opposition must be made on personal knowledge, must set forth admissible evidence, and must "show affirmatively that the affiant is competent to testify to the matters stated." (*Id.* at subd. (d).) Unless triable issues of material fact exist, no trial is required and the plaintiff is entitled to judgment on that claim as a matter of law.

On appeal, we apply an independent standard of review to determine whether a trial is required—whether the evidence favoring and opposing the summary judgment motion would support a reasonable trier of fact's determination in the defendant's favor on the cause of action or defense. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) In doing so, we view the evidence in the light most favorable to the party opposing summary judgment. (*Id.* at p. 843; *Alexander v. Codemasters Group Limited* (2002) 104 Cal.App.4th 129, 139.) We accept as true the facts shown by the evidence offered in opposition to summary judgment and the reasonable inferences that can be drawn from them. (*Spitzer v. Good Guys, Inc.* (2000) 80 Cal.App.4th 1376, 1385-1386.)

B. Invasion of Privacy and Defamation

"'Defamation is an invasion of the interest in reputation. The tort involves the intentional publication of a statement of fact that is false, [is] unprivileged, and has a natural tendency to injure or which causes special damage. . . . Publication means

communication to some third person who understands the defamatory meaning of the statement and its application to the person to whom reference is made. Publication need not be to the "public" at large; communication to a single individual is sufficient.'" (*Raghavan v. Boeing Co.* (2005) 133 Cal.App.4th 1120, 1132.) "Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation." (Civ. Code, § 45.) To establish a cause of action for libel per se, a plaintiff must demonstrate the defendant made a statement about the plaintiff that was defamatory without the necessity of explanatory matter, such as an inducement, innuendo, or other extrinsic fact. (Civ. Code, § 45a.)

A false light claim is in substance equivalent to a defamation claim. (*Kapellas v. Kofman* (1969) 1 Cal.3d 20, 35, fn. 16.)

C. Analysis

In support of his motion for summary judgment, Gibson offered excerpts from the transcript of Swingle's deposition testimony wherein Swingle admitted to posting on the Internet that Gibson was racist and anti-Semitic and threatened violence against others. Swingle also stated he "may have" posted that Gibson offered a reward for a murder. Gibson declared Swingle's statements were false. This evidence carried Gibson's burden to show that Swingle intentionally published false, unprivileged statements of fact about Gibson that had a natural tendency to injure his reputation. The burden then shifted to Swingle to establish existence of a triable issue of material fact.

Swingle argues that Gibson's motion for summary judgment mischaracterized Swingle's deposition testimony, and the trial court similarly mischaracterized it in the order granting summary judgment. The point is irrelevant because even if some portions of the testimony were mischaracterized, the statements we quote above were not, and they suffice to carry Gibson's burden.

Swingle argues his deposition testimony pertained only to his Internet posts about a "Gibson," which did not necessarily mean plaintiff. The argument is without merit. During deposition, Gibson asked Swingle whether he made statements specifically about Gibson. Swingle admitted he did.

Swingle argues the trial court ignored the evidence he offered in opposition to Gibson's motion for summary judgment. We disagree.

A declaration offered in opposition to summary judgment must be based "on personal knowledge" and "set forth admissible evidence." (Code Civ. Proc., § 437c, subd. (d).) Swingle's evidence comprised more than 100 documents obtained from the Internet, purportedly demonstrating Gibson's bad behavior on the Internet. None of the documents is authenticated, none demonstrates personal knowledge by any author other than Gibson, and most are incomprehensible and unexplained. Assuming, as Swingle represents, that the documents reflected statements actually made on the Internet, Swingle made no showing that he had personal knowledge about who the authors were, about whether the statements were true, or whether the authors knew whether their statements were true. Much of what passes for evidence in the comments section of a blog is not admissible in court.

DISPOSITION

The judgment is modified to state summary judgment is granted on plaintiff's fifth cause of action. As modified, the judgment is affirmed. Each party is to bear his own costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.