Filed 6/28/18 Mireles v. Teamsters Local No. 186 CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

ED J. MIRELES, Plaintiff and Respondent, v. TEAMSTERS LOCAL NO. 186 et al., Defendants and Appellants.	2d Civil No. B283451 (Super. Ct. No. 56-2017-00492798-CU-OE-VTA) (Ventura County)

Teamsters Local No. 186 and Abel Garcia appeal an order of the trial court denying a special motion to strike pursuant to the anti-SLAPP statute.[1] (Code Civ. Proc., § 425.16.)[2] We affirm.

This lawsuit concerns a dispute between Ed J. Mireles, a longtime Teamsters Union business representative, and his

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[1] We refer to Teamsters Local No. 186 and Abel Garcia collectively as "Local No. 186" or "Local" except where clarity demands that we draw a distinction.

[2] All statutory references are to the Code of Civil Procedure.

former employer, Local No. 186, an affiliate of the International Brotherhood of Teamsters. Garcia, the secretary-treasurer and principal officer of Local No. 186, dismissed Mireles from employment asserting that he was dishonest. Mireles then brought an action for unpaid wages and vacation pay, among other causes of action. In his complaint, Mireles alleged that Local No. 186 refused his demands for unpaid compensation and that Garcia defamed him by statements to union officers and others impugning his character. In response, Local No. 186 filed an anti-SLAPP motion directed to the complaint's defamation and intentional infliction of emotional distress causes of action.

FACTUAL AND PROCEDURAL HISTORY

On February 10, 2017, Mireles filed a complaint alleging eight causes of action, including defamation and intentional infliction of emotional distress. He alleged that he commenced employment with Local No. 186 on January 1, 2016, pursuant to a nine-paragraph written employment agreement. The agreement provided for a one-year term that would continue on a month-to-month basis thereafter. Either party could terminate the agreement upon 60 days' written notice. Garcia, as chief executive officer of Local No. 186, executed the agreement on behalf of the union.

Paragraph 3 of the agreement provided: "Ed J. Mireles is a Teamster for 38 consecutive years and shall receive 8 Holidays, 5 Personal Days, 5 Floating Holidays, 7 days Sick Leave and 30 days Vacation for a total of 55 paid days each year effective January 1, 2016."

Mireles alleged that in October 2016, he took an approved vacation that included 19 workdays. When he returned from vacation, Garcia dismissed him and later informed local officials

that Mireles was dismissed because he was dishonest and had falsified the employment agreement. Garcia later sent Mireles a letter stating that Mireles was dismissed from employment "for several reasons, chief among them [his] dishonesty - fabricating a false document to make it look as though [Garcia] had agreed to give [him] paid vacation/time off during [his] first year of employment."

In response to Mireles's complaint, Local No. 186 filed an anti-SLAPP motion pursuant to section 425.16. The Local argued that Garcia's statements regarding the reasons for Mireles's dismissal were protected by the anti-SLAPP statute. The Local asserted that the alleged defamatory statements were in connection with a public issue or an issue of public interest because it had recently suffered large financial losses from former officers who had raided the treasury of $329,000 to compensate for claimed unpaid vacation pay. The Local also argued that Mireles had "stoked [his dismissal] controversy" by lobbying through telephone calls three Local executive board members for payment of his wage and vacation claims and reinstatement of his position.

Local No. 186 asserted that Mireles could not establish a probability that he would prevail on the merits of his lawsuit. Among other arguments, the Local presented a copy of a letter to Mireles dated September 30, 2016, stating that his employment contract would not be renewed. The Local also presented a copy of an eight-paragraph written employment agreement dated January 1, 2016, signed by the parties, that does not contain a paragraph concerning holiday, sick leave, or vacation pay.

Following written and oral arguments by the parties, the trial court denied the anti-SLAPP motion. In its written ruling,

the court stated that Mireles's lawsuit concerned "a private dispute between a private person and his employer. . . . Mireles was not a public figure, he was not involved in any embezzlement . . . . His dispute involved himself and Garcia." The court relied upon *Rivero v. American Federation of State, County, and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 924 ["[U]nlawful workplace activity below some threshold level of significance is not an issue of public interest, even though it implicates a public policy"].

Local No. 186 appeals and contends that the trial court erred by denying the anti-SLAPP motion because Garcia's statements were an issue of public interest to the 1,600 Local members.

The anti-SLAPP motion and Mireles's response present a "disagreement about what issues truly possess 'public' significance." (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1122.)

DISCUSSION

Local No. 186 argues that Garcia's asserted defamatory statements were communications made "in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e)(4).) The Local points out that the anti-SLAPP statute also applies to private communications regarding "an issue of interest to only a limited but definable *portion* of the public . . . a 3,000-member homeowners association [or] a 10,000-member union local." (*Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 737-738 [accusation that union employee, board member, and trustee was "double dipping" was a matter of public interest to 10,000 member union].) The Local contends that Mireles's dismissal is

connected to an ongoing controversy regarding the financial malfeasance of former Local officers.

Section 425.16, subdivision (b)(1) provides that a cause of action "arising from" a defendant's act in furtherance of a constitutionally protected right of free speech or petition may be struck unless the plaintiff establishes a probability that he will prevail on his claim. (*Barry v. State Bar of California* (2017) 2 Cal.5th 318, 321; *Fahlen v. Sutter Central Valley Hospitals* (2014) 58 Cal.4th 655, 665, fn. 3.) Section 425.16 "provides a procedure for the early dismissal of what are commonly known as SLAPP suits . . . litigation of a harassing nature, brought to challenge the exercise of protected free speech rights." (*Fahlen*, at p. 665, fn. 3.) "The anti-SLAPP statute's definitional focus is not the form of the plaintiff's cause of action but, rather, the defendant's *activity* that gives rise to his or her asserted liability--and whether that activity constitutes protected speech or petitioning." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 92.) The anti-SLAPP statute instructs that its provisions are to be "construed broadly" to implement its legislative objectives. (§ 425.16, subd. (a); *Barry*, at p. 321.)

The analysis of an anti-SLAPP motion filed pursuant to section 425.16 is two-fold. (*Barry v. State Bar of California*, *supra*, 2 Cal.5th 318, 321; *Abuemeira v. Stephens* (2016) 246 Cal.App.4th 1291, 1297.) The trial court first decides whether defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. (*Parrish v. Latham & Watkins* (2017) 3 Cal.5th 767, 774.) If the court finds that a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on his claim. (*Barry*, at p. 320; *Abuemeira*, at pp. 1297-1298.) Only a

cause of action that satisfies both prongs of the anti-SLAPP statute is subject to a special motion to strike. (*Barry*, at p. 321.) We independently review the trial court's determination of each step of the analysis. (*Golden Eagle Land Investment, L.P. v. Rancho Santa Fe Assn.* (2018) 19 Cal.App.5th 399, 412; *Baughn v. Department of Forestry & Fire Protection* (2016) 246 Cal.App.4th 328, 333.)

"Public interest" within the meaning of section 425.16, subdivision (e)(4) is broadly construed to include private conduct that impacts a large segment of society or that affects a community in a manner similar to that of a governmental entity. (*Hailstone v. Martinez*, *supra*, 169 Cal.App.4th 728, 737.) Judicial decisions have described "public interest" as a matter of concern to a substantial number of people and not a private controversy. (*Id.* at p. 736.) "[A] matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest." (*Ibid.*) There must be "a degree of closeness" between the challenged statements and the asserted public interest. (*Ibid.*) In addition, the speaker's conduct should focus on the public interest, not a private controversy. (*Ibid.*)

The trial court's ruling was proper because Local No. 186 did not meet its burden of establishing that Mireles's complaint arises from protected activity. Garcia's statements were made after he dismissed Mireles from employment and no ongoing controversy existed that was of concern to a substantial number of people. (*Du Charme v. International Brotherhood of Electrical Workers* (2003) 110 Cal.App.4th 107, 118 [following employee's dismissal from employment, local union official posted on website that employee was dismissed for financial mismanagement].) "To grant protection to mere informational statements [post-

termination] . . . would in no way further the statute's purpose of encouraging *participation* in matters of public significance." (*Id.* at p. 118.) Thus, Local No. 186's argument sweeps too broadly. *Du Charme* applies here. That the controversy may be "ongoing" is not a significant distinction.

Moreover, the anti-SLAPP statute requires that a "public issue" possess attributes that render it a public, rather than a private, interest. (*Baughn v. Department of Forestry & Fire Protection*, *supra*, 246 Cal.App.4th 328, 335.) Thus, a matter of concern to the speaker and a "'small, specific audience'" is not a matter of public interest. (*Id.* at p. 336.) Unlawful workplace activity below some threshold level of significance is not an issue of public interest. (*Rivero v. American Federation of State, County, and Municipal Employees, AFL-CIO*, *supra*, 105 Cal.App.4th 913, 924 [asserted abusive supervision of eight university employees not a matter of public interest].) Employee Mireles's demand for payment of unpaid wages and vacation time amounting to approximately $8,500 is dissimilar to the recent plunder of $329,000 from the Local's treasury by former elected officers of the Local. Here Mireles's post-termination dialogue with three members of the Local's executive board does not transform his employment dismissal into an issue of public interest.

Hailstone v. Martinez, *supra*, 169 Cal.App.4th 728, does not assist the Local. There, a union official accused plaintiff, a union employee, of financial improprieties. The official sent plaintiff a notice of suspension from employment and sent copies of the notice to other union officials. The union eventually dismissed plaintiff from employment. Plaintiff retained his other positions with the union, however -- as a member of the executive board

and as a trustee of the union health plan. Plaintiff sued for defamation and the reviewing court concluded that the suspension notice involved a public issue in view of plaintiff's other continuing positions with the union. (*Id.* at p. 738.) That Mireles tried to express his views regarding his termination to a few members of the executive board is not remotely similar to the facts in *Hailstone*.

Local No. 186 has not met its initial burden pursuant to section 425.16. We therefore do not consider whether Mireles has demonstrated the viability of his defamation claims.

The order is affirmed. Respondent shall recover costs.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Henry J. Walsh, Judge

Superior Court County of Ventura

Rothner, Segall & Greenstone, Glenn Rothner, Jonathan Cohen, Hannah Weinstein, Kevin Koligian for Defendants and Appellants.

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