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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

SOUTHWEST LAW CENTER,

Plaintiff and Respondent,

v.

CHARLES PEREZ,

Defendant and Appellant.

B293849

(Los Angeles County  
Super. Ct. No. BC695768)

APPEAL from an order of the Superior Court of Los Angeles County, David Sotelo, Judge. Affirmed.

David A. Kay for Defendant and Appellant.

Southwest Legal Group and Anthony R. Lopez, Jr., for  
Plaintiff and Respondent.

Southwest Law Center brought a defamation action against Charles Perez. Perez sought to dismiss the action under the anti-SLAPP statute, Code of Civil Procedure section 425.16. The trial court denied the motion on the basis that Perez had failed to meet his burden of proof under the first prong of the statute. We agree and affirm.

### ***FACTS AND PROCEDURAL BACKGROUND***

#### ***1. Background Facts***

As we shall discuss, the complaint is drawn with apparent antipathy for detail; in a spirit of consistency the parties submitted little evidence in connection with the anti-SLAPP motion. In fact, the only evidence before us is the declaration of Perez's counsel in support of the motion; Southwest proffered no evidence as part of its opposition. The parties seem to concede that certain background facts are true, but those facts are not supported by any evidence. The parties agree that Southwest is a personal injury law firm. The parties also agree that Perez is the owner of Medical Acquisition Company, Inc. (MAC), a "lien management and medical funding company, engaged in the practice of purchasing accounts receivable and associated lien rights of hospitals and surgery centers."

#### ***2. Southwest's Complaint***

The complaint does not identify or explain any existing or prior business relationship between Southwest and Perez; the complaint does not mention MAC at all. Although the complaint alleges Perez made some defamatory statements about Southwest "[d]uring a lunch meeting," it does not state when or where the meeting took place (other than in Los Angeles County). Nor does it specifically identify to whom the statements were

made, except they were made “to relevant parties” during a lunch meeting “with an individual who does business with Southwest.”

Southwest alleges that Perez made “false, destructive and defamatory rumors and misstatements” about Southwest, specifically by “announcing . . . that Southwest does not pay its doctors. Mr. Perez stated at the lunch meeting that he was in the process of obtaining a judgment against Southwest for \$22 million for interfering with Mr. Perez’s business relationships with certain doctors.” This was alleged to have been in furtherance of Perez’s “plan to tarnish the reputation” of Southwest, and done “with malice, oppression, and/or fraud,” justifying punitive damages.

3. *Perez’s Anti-SLAPP Motion*

Perez moved to strike the complaint under the anti-SLAPP statute. As moving party, Perez was required to establish the complaint arose from an act in furtherance of his right to petition or free speech under the United States or California Constitution in connection with a public issue. (Code Civ. Proc., § 425.16, subd. (b).) The anti-SLAPP statute identifies four categories of protected speech to which it applies. (Code Civ. Proc., § 425.16, subds. (e)(1)-(e)(4).) Perez argued that his speech fell within the second category, which protects statements “made in connection with an issue under consideration or review by a . . . judicial body . . . .” (Code Civ. Proc., § 425.16, subd. (e)(2).) Specifically, Perez argued there was ongoing litigation between Southwest and MAC, and that his allegedly defamatory statement related to that litigation.

The face-sheet of Perez’s motion suggests that it was to be supported by declarations of Perez and his attorney. The declaration of Perez is nowhere to be found in the appellate

record.<sup>1</sup> In fact, the only declaration referenced in Perez’s motion and appellate briefs is that of his counsel.<sup>2</sup> We have no percipient or expert evidentiary support for the anti-SLAPP motion.

Much of Perez’s counsel’s declaration relates to the timeliness of the anti-SLAPP motion. There are only two paragraphs of the declaration that address whether the alleged defamation was made in connection with an issue under consideration by a judicial body.<sup>3</sup>

The first states:

“There are two other lawsuits involving Perez and Southwest. The basis of the [c]omplaint in BC585918 is breach of contract for Southwest’s failure to pay its clients’ medical bills. The complaint was amended to add causes of action for Defamation and Interference with Prospective Economic Advantage based on Southwest’s defamatory statements about

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<sup>1</sup> The trial court’s docket sheet contains an entry, in all capital letters, identifying the declaration of counsel. It has a second entry, not in capitals, for a “Declaration” which is “Filed by Charles Perez” that same date.

<sup>2</sup> In Perez’s reply brief on appeal, he states that he “produced an affidavit stating that the truth of the allegations was an absolute defense to the defamation lawsuit.” The referenced affidavit appears to be the declaration of counsel, not Perez. There is no evidence that the alleged statements were true, only counsel’s noncontroversial point that truth is a defense in a defamation action.

<sup>3</sup> Southwest objected to the first of these paragraphs as irrelevant. The trial court did not rule on any of Southwest’s objections, and Southwest does not pursue them on appeal.

Perez and MAC to medical providers and the damage resulting therefrom, which has been quantified by expert witness Heather Xitco to be approximately \$19 million without interest. The gravamen of the BC643074 case is Southwest's failure to pay its former clients' medical bills."

The second paragraph from counsel's declaration supplies no evidence, only a repetition of counsel's legal argument from the motion stating, "Southwest's complaint alleges Perez made the following statement: '. . . Southwest does not pay its doctors . . . [I am] in the process of obtaining a judgment against Southwest for \$22 million for interfering with [my] business relationships with certain doctors.' As such, the comment made is directly regarding the issues currently pending before a judicial body or other proceeding authorized by law and such comment is protected free speech in connection with those issues."

4. *Southwest's Opposition*

Southwest's opposition was unsupported by any evidence of whether the complaint arose from Perez's speech in connection with an issue under consideration by a judicial body.<sup>4</sup> Southwest argued, however, that "[t]his is a private matter, and has no protection. The statements made by [d]efendant were regarding private financials and business dealings which were made during a private lunch and not in any way connected to a public issue or public interest."

5. *Ruling and Appeal*

After a hearing, the trial court denied the motion concluding that Perez had not established the statements were

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<sup>4</sup> Southwest attached only a brief declaration on the topics of timeliness and attorney fees.

made in connection with an issue under consideration in a judicial proceeding.<sup>5</sup> Perez filed a timely notice of appeal.

## DISCUSSION

### 1. *Standard of Review*

“We review de novo the grant or denial of an anti-SLAPP motion. [Citation.] We exercise independent judgment in determining whether, based on our own review of the record, the challenged claims arise from protected activity. [Citations.] In addition to the pleadings, we may consider affidavits concerning the facts upon which liability is based. [Citations.] We do not, however, weigh the evidence, but accept the plaintiff’s submissions as true and consider only whether any contrary evidence from the defendant establishes its entitlement to prevail as a matter of law. [Citation.]” (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1067 (*Park*).)

### 2. *Anti-SLAPP Law*

“Anti-SLAPP motions are evaluated through a two-step process. Initially, the moving defendant bears the burden of establishing that the challenged allegations or claims ‘aris[e] from’ protected activity in which the defendant has engaged. [Citations.] If the defendant carries its burden, the plaintiff must then demonstrate its claims have at least ‘minimal merit.’ [Citations.]” (*Park, supra*, 2 Cal.5th at p. 1061.)

### 3. *Arising From Protected Activity*

“A claim arises from protected activity when that activity underlies or forms the basis for the claim. [Citation.] Critically, ‘the defendant’s act underlying the plaintiff’s cause of action must

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<sup>5</sup> Because our review is de novo, we do not further address the court’s rationale.

*itself* have been an act in furtherance of the right of petition or free speech.’ [Citations.]” (*Park, supra*, 2 Cal.5th at p. 1062.)

Here, Perez argues the challenged defamatory speech is protected activity because it fell within the scope of subdivision (e)(2) of Code of Civil Procedure section 425.16, which, protects “any written or oral statement or writing made in connection with an issue under consideration or review by a . . . judicial body . . . .”

The anti-SLAPP statute does not protect “*any* conduct in connection with an official proceeding” however remote; the statement must occur in connection with an issue under consideration or review in the proceeding. (*Paul v. Friedman* (2002) 95 Cal.App.4th 853, 866 [statements addressing personal matters bearing no relation to the claims asserted in an arbitration were not “ ‘in connection with’ ” the arbitration].) A statement is “ ‘in connection with’ ” litigation if it (1) relates to the substantive issues in the litigation and (2) is directed to persons having some interest in the litigation. (*Seltzer v. Barnes* (2010) 182 Cal.App.4th 953, 962; *Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255, 1262.)

The critical failure with Perez’s motion is in the second element. It is impossible to determine whether Perez’s statement was directed to persons having some interest in the litigation, as there is no evidence as to whom the allegedly defamatory statements were made. In his brief on appeal, Perez suggests the statements “were made to actual and potential customers of Southwest who had an obvious interest in not being taken advantage of by Southwest,” but there is no evidence of this.<sup>6</sup>

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<sup>6</sup> Perez’s briefing repeatedly uses the word “customers” to describe the person or persons to whom he allegedly spoke.

Perez characterizes the complaint as alleging that he “discussed the pending lawsuits at a luncheon which included doctors that Southwest was either doing business with or hoped to do business with,” but this, too, is not supported by the record. The complaint states only that the statements were made “to relevant parties” during a lunch meeting “with an individual who does business with Southwest.” But it is unknown whether the “individual who does business with Southwest” was a doctor interested in the pending lawsuits, or someone whose business with Southwest was wholly unrelated to the pending actions – a client, prospective landlord, or someone providing technical assistance. In the absence of allegations or evidence of the nature of the relationship between Southwest and the individual to whom the allegedly defamatory statements were made, we cannot determine whether the individual had some interest in the pending litigation. It follows that Perez has not met his burden of establishing the statements were made “in connection with” the pending litigation.

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Southwest is a personal injury law firm; it is not at all clear that such an entity has “customers.”



### **DISPOSITION**

The order denying the anti-SLAPP motion is affirmed.  
Perez is to pay Southwest's costs on appeal.

RUBIN, P. J.

WE CONCUR:

BAKER, J.

KIM, J.