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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

SHAH SABETI-T,

Plaintiff and Appellant,

v.

CITIBANK, N.A., et al.,

Defendants and Respondents.

B226128

(Los Angeles County
Super. Ct. No. LC089169)

APPEAL from an order of the Superior Court of Los Angeles County,
Frank J. Johnson, Judge. Affirmed.

Shah Sabetit, in pro. per., for Plaintiff and Appellant.

Frاندzel Robins Bloom & Csato, Thomas S. Arthur and Casey Z. Donoyan
for Defendants and Respondents.

INTRODUCTION

This is an appeal from an order granting a motion to strike pursuant to Code of Civil Procedure section 425.16. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

Shah Sabetit filed a form complaint alleging (1) breach of contract, (2) “fraud and slander,” (3) negligence and (4) intentional tort causes of action against Citibank, N.A., Philip Jordan and Chris Swanson.¹ According to the six-page declaration Sabetit attached to his complaint in support of all causes of action, he applied for a business account at the Citibank branch in Woodland Hills on June 15, 2009. Two days later, he went to the branch to inquire about his application and learned his business banking representative (Jordan) was on leave for 10 to 12 days. Sabetit then opened personal checking and savings accounts and received an ATM card.

On June 30, Sabetit said, his ATM card was denied. He contacted the branch manager (Swanson) who told Sabetit his business account application had been denied and the bank was closing his personal accounts as well; she would not give a reason. She said she was sending him a check for the remaining balance and he should not make any additional wire transfers. He asked her not to mail the check because he had a problem with his mail being stolen and would pick up the check in a couple of days. She agreed.

When he went into the bank on July 2, he said, his business documents and the \$90 check he had previously provided to open the account were returned to him; the operations manager (Darlene Euerton) told him, “It is too big; I am closing your account.” When he asked what was too big, he said, she would not respond. She

¹ He also marked a box for “other” causes of action attached and listed: Fraud, intentional tort, slander, malicious prosecution, unfair business practice, negligence—infliction of emotion distress and intentional infliction of emotional distress.

approved a withdrawal from the two closed accounts, but he asked if he could leave a few dollars to see if his friends at the Reseda branch would help him. She agreed so he left \$8 in one account and \$10 in the other.

At the Reseda branch, Sabetit said, he was working with a police officer (Brian Connely) who works with a business account representative (Kevin Sullivan) regarding questionable checks for a few years prior. Officer Connely asked Sabetit to provide all documents to Sullivan who would then forward them to Connely. Sabetit was “working with Citibank and various police departments worldwide catching fraudsters [sic] who commit fraud via check or internet.” Neither Sullivan nor the Reseda operations manager (Ms. Ortega) could find a reason why his accounts had been closed; he was advised to call the fraud department and told he could open an account upon authorization from that department.

Sabetit called the fraud department, he said, and was told all he had to do was “clear their ledger.” As soon as he was reimbursed for the money in the Woodland Hills accounts, he could open a new account at the Reseda branch.

On July 27, after receiving a call from the fraud department, Jordan called the police and gave a written statement attached as Exhibit A to Sabetit’s complaint. According to Sabetit, Jordan committed perjury when he said Sabetit had walked into the branch on July 22 and “threatened that if they closed my account that I would commit bodily harm against Chris Swanson.” He said the account was already closed, the Reseda Branch was going to open a new one and there was no reason for him to go back to Woodland Hills. “This is what the surveillance audio and video tape of the bank will prove at the trial.”²

² According to the attached police report and statement signed by Jordan, Sabetit came into the branch on July 22 and “rambled on about who he is and what he is capable of doing to the bank if we do not honor his business and open his checking accounts. He made references about the bomb scare our branch had [on July 10, 2009] and said ‘I am so powerful and connected’ and insinuated that he was responsible for the bomb that was

On August 4, he was able to open a new business account at Chase Bank.

On October 20, Sabetit said, he received a Citibank money order in the amount of \$18.34.

He received a call from a Los Angeles Police Department detective (Bret Richards) who informed him a report had been filed against him for threatening bodily harm to Swanson. "In reality," Sabetit said, "I told Mr. Jordan[] that I called Mr. Bradley Dale Tubin, Esq. and informed him about HSBC Bank closing my account for no reason and taking some of my monies, rej[e]cting all of my wire transfers. I told him the same thing happen[e]d at HSBC bank and my attorney told me do not call the police from inside the bank. He recommended that I should file a police report at the police station. That is exactly what I told Mr. Jordan on 7/2/09 and not 7/22/09."

On October 27, Sabetit said, he received a letter from the City Attorney indicating a criminal complaint had been filed against him and he was to appear in court on November 19. The case was continued to December 19 and then another few times until March 15, 2010. Citibank then "made a civil compromise indicating that there was a language barrier and they had misunderstood me. They also proposed that I pay for their employees['] time. If I did so they agreed to rescind the complaint. My attorney called the city attorney and told him about the civil compromise. The city attorney stated he would oppose the civil compromise and therefore wants to proceed with the criminal

put at our branch. He repeatedly threatened Chris Swanson's well-being to me and said 'she will meet catastrophic consequences if she closes my accounts'. He said it was important for Citibank to honor his accounts because he needs Citibank in order to transfer his money from abroad to the United States. [¶] He also went on to say that he was a police officer working 'deep undercover' to expose the 'bad cops' that take bribes and extort money from other people. He truly rambled incoherently at times about white supremacy, the Christians, our political stance, "etc." [¶] In short, Shah Sabetit appeared very 'unstable' when he came into our branch and engaged me. I was alarmed with his anger toward Chris Swanson and Citibank as a whole." According to the police report, the branch had been robbed on July 10, 2009, "by use of a facsimile explosive device," and the victim was advised to seek a restraining order.

matter, even t[h]ough they have only one witness statement which is Mr. Jordan. There is no surveillance video tape placing me at that time and date in that particular bank and making such statements.”

On March 15, 2010, Sabetit said, the case was set for trial on April 6. His attorney failed to subpoena any evidence to prove his innocence. “He told m[e] that his hands were tied.” “Based on the above testimony, I pray that the court will order the Defendants to be found liable for committing breach of contract, fraud, slander, malicious prosecution, unfair business practice[,] negligence, infliction of emotional distress, intentional infliction of emotional distress. I also pray the court will order the Defendants to immediately release all funds held both in my name personally as well as my companies [sic] name.”

Citibank, Jordan and Swanson filed a demurrer and motion to strike pursuant to Code of Civil Procedure section 425.16 and requested attorney fees in the amount of \$4,048. In their motion to strike, they argued the statements on which Sabetit’s claims were based constituted free speech authorized by law and privileged under Civil Code section 47, subdivision (b), and Sabetit could not establish a probability of prevailing on his claims.

According to Charissa Swanson’s declaration, she was the manager of the Citibank branch in Woodland Hills. Sabetit came into the branch in June 2009 saying he wanted to open an account for his online business to refer people to a network of attorneys for a fee. The bank considers the internet a high risk area, and conducted a due diligence investigation including a review of Sabetit’s business website—winacase.com. The website described actions Sabetit had taken, including lawsuits he had filed, and contained “a lot of anti-government sentiments.” Swanson discussed the matter with Citibank’s area operations director who instructed her to send the matter to the bank’s compliance department for review. In the meantime, Sabetit opened his two personal accounts without mentioning his business account was under review. Later in June,

Sabetit came into see Swanson. He “rambled” on about a variety of subjects and said he needed the business account opened immediately because he was expecting wire transfers from sanctioned countries and needed the money so he could sue the U.S. government. He also said he was working undercover to get bad L.A. police officers off the street and needed the wire transfers for that reason as well. When she told Sabetit she would let him know when the bank had made a decision, he said, “[D]on’t worry, I won’t hurt you,” which stunned and frightened [her] given the manner in which he made the statement.”

After that, she spoke with Sabetit on the phone and explained the bank was reserving its right not to retain his consumer account or open his business account. She wrote a letter dated July 17, 2009, informing him the bank’s compliance department had instructed the branch to close his account on July 27, 2009, but that letter was returned as undeliverable by the United States post office. When she learned about Sabetit’s statements to Jordan about the bomb that had been placed in the bank during a robbery and that she would suffer catastrophic consequences if his account was closed and his business account was not opened, she was “alarmed and frightened” and “took the statements seriously.” Consequently, she contacted Detective Richards of the Los Angeles Police Department who was investigating the robbery, informed him of Sabetit’s remarks and provided a report as reflected in Exhibits B and C to Sabetit’s complaint. “As a result of the statements made by Sabetit, I am still fearful for my safety and the safety of my children.” She acted in good faith in cooperating with the police in their investigation, Swanson said, based on her belief Sabetit intended to carry out the threats he made against her and his statements that he was responsible for the bomb threat against the bank. Similarly, Jordan filed a declaration attesting to the facts contained in his prior statement to police.

In his declaration in opposition to the motion to strike, Sabetit said the defendants had perjured themselves to prevent him from receiving funds from Europe and to discredit him before he becomes a candidate for political office. “[A]s an innocent part[y’s] luck, a r[o]bbery happened at the same bank, and the surveillance tape was released to the authorities and the Media, which is now in the custody of the FBI, and the police department discovery section, and the channel 5, KTLA, [t]elevision station” The perjured police report would be proven by the bank’s surveillance video and audio he said. Sabetit said the dismissal of the criminal case only strengthened his malicious prosecution action. (According to attached copies of minute orders, one count for violation of Penal Code section 422 and one count of violation of Penal Code section 148.1, subdivision (c) against Sabetit were dismissed in furtherance of justice on May 12, 2010, on the following terms: “The restraining order will remain in full effect for a period of [one] year by agreement of all parties. If defendant violates the order, defendant will be prosecuted.”) Sabetit also said he had accomplished a 65 percent drop in the crime rate in the Valley alone; his cousin had visited the Space Station in 2006; and his relatives “mostly married into American military families, and thus, have a very distinguish[ed] family name to protect. It is not fair for some[one] working for the hierarchy to take it upon themselves to ruin a family name like plaintiff, and his family, in the pursuit of a conspiracy against him, or just because they are ordered to do so.”

On the day of the hearing (June 17, 2010), Sabetit substituted Bradley Dale Tubin as his attorney of record. After hearing argument, the trial court granted the motion to strike, noting Sabetit could not establish the probable validity of his claim, and granted the request for attorney fees in the amount of \$2,500. The demurrer was placed off calendar as moot.

Sabetit appeals.

DISCUSSION

According to Sabetit, the defendants cannot “even remotely, suggest in the slightest way that their ‘right of petition or free speech’ is at all at issue,” and “the remainder of their arguments do not apply because they cannot meet their initial burden.” He says the “perjured police report can easily be proven by the surveillance ‘digital’ video and audio camera tape of their bank.” He did “nothing short of opening a business account in Citibank, and all hell broke loose.” He did not force the filing of the false police report. Sabetit also asks that we take judicial notice of a prior appeal involving another authority’s conspiracy to steal his property in which he said “the Hierarchies hacked into [his c]omputer and changed the writings in [his] pleadings” and says there have been “24 years of conspiracies against [Sabetit and his family].”

As relevant, Code of Civil Procedure section 425.16, subdivision (b) provides as follows: “(1) 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. (2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.” (All undesignated statutory references are to the Code of Civil Procedure.)

Subdivision (e) of section 425.16 specifies: “As used in this section, ‘act in furtherance of a person’s right of petition or free speech under the United States or California Constitution in connection with a public issue’ includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) 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, (3) any

written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.”

As our Supreme Court has explained, “we may summarize a court’s task in ruling on an anti-SLAPP motion to strike as follows. Section 425.16, subdivision (b)(1) requires the court to engage in a two-step process. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. The moving defendant’s burden is to demonstrate that the act or acts of which the plaintiff complains were taken ‘in furtherance of the [defendant]’s right of petition or free speech under the United States or California Constitution in connection with a public issue,’ as defined in the statute. (§ 425.16, subd. (b)(1).) If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim. Under section 425.16, subdivision (b)(2), the trial court in making these determinations considers ‘the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.’”

(Equilon Enterprises v. Consumer Cause, Inc. (2002) 29 Cal.4th 53, 67.)

The pleadings and the affidavits submitted by the parties establish that Sabetit’s action is one arising from Citibank’s, Swanson’s and Jordan’s activities in furtherance of constitutional rights of speech or petition, and, as the trial court concluded, Sabetit had not established a probability of prevailing on his claims. *(Hagberg v. California Federal Bank (2004) 32 Cal.4th 350, 364; Hunsucker v. Sunnyvale Hilton Inn (1994) 23 Cal.App.4th 1498, 1502-1504.)* It follows that the motion to strike was properly granted.³ (§ 425.16, subd. (b)(1).)

³ To the extent Sabetit makes passing mention of a cause of action for malicious prosecution in his declaration, his own supporting documentation defeats such a claim; the criminal charges were dismissed subject to his compliance with a one-year restraining order. (See *Eells v. Rosenblum (1995) 36 Cal.App.4th 1848, 1854.*)

DISPOSITION

The order is affirmed. Citibank is entitled to its costs of appeal.

WOODS, Acting P. J.

We concur:

ZELON, J.

JACKSON, J.