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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

IMA MORRIS,

Plaintiff and Appellant,

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA et al.,

Defendants and Respondents.

B264154

(Los Angeles County
Super. Ct. No. BC552424)

APPEAL from an order of the Superior Court of Los Angeles County, Rafael A. Ongkeko, Judge. Affirmed.

Lauzon & Euler, Debra A. Lauzon; Law Offices of Robert R. Ronne and Robert R. Ronne, for Plaintiff and Appellant.

Gordon & Rees, Stephen E. Ronk and Andrea K. Douglas, for Defendants and Respondents.

Plaintiff and appellant Ima Morris appeals from an order granting a special motion to strike under Code of Civil Procedure section 425.16 (the anti-SLAPP statute)¹ brought by defendants and respondents Deneen Mack, Jim Justiss, and the Regents of the University of California (the Regents) as to a defamation cause of action. The trial court found defendants' investigation of whether Morris violated employment policies constituted an official proceeding authorized by law, and therefore, statements made in connection with the issue constituted a protected activity under the anti-SLAPP statute. On appeal, Morris contends defendants made defamatory statements that were not before or in connection with an issue under review in an official proceeding. We conclude defendants submitted evidence that the defamation claim was based on statements made before an official proceeding and in connection with an issue under review by an official proceeding. Morris failed to submit evidence of any defamatory statement that was not made in connection with an issue under review in an official proceeding. Therefore, the anti-SLAPP statute applied. Morris failed to submit any evidence to establish a probability of prevailing on the merits and she does not contend otherwise on appeal. We affirm the order striking the defamation cause of action.

FACTS AND PROCEDURAL BACKGROUND

Relevant Allegations of the Complaint

The Regents hired Morris as a medical coding specialist at UCLA Medical Center in 2007. Mack was her supervisor and Justiss was employed in human resources. In February 2013, Morris reported activity that she believed violated medical privacy laws. In 2013, Morris complained that her workplace was too noisy to perform her work. She

¹ SLAPP is an acronym for "Strategic Lawsuits Against Public Participation." (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57, fn. 1.) All further statutory references are to the Code of Civil Procedure, unless otherwise stated.

requested a different location or earphones, but Mack did not respond to her requests. On June 15, 2013, Morris was suspended and received a notice of intent to dismiss her from her employment. In July 2013, Mack made racially offensive remarks and said Morris needed psychiatric counseling. On August 13, 2013, Morris's employment was terminated. Morris received a right-to-sue letter from the Department of Fair Employment and Housing based on her complaints of discrimination and retaliation.

Morris filed the complaint in the instant case on July 23, 2014, against the Regents, Mack, and Justiss. She filed an amended complaint against them on September 22, 2014, for discrimination, violation of Labor Code section 1102.5, subdivision (c), retaliation, and defamation. The cause of action for defamation alleged that beginning on or before August 13, 2013, continuing through the present, defendants caused internal and external defamatory statements to be published to third persons and the community. The express and implied statements included: oral and written communications that Morris violated the Medical Center's policy and/or the law; engaged in misconduct; was mentally unstable; was required to submit to psychological examination; and/or needed training about violence in the workplace. The statements were published and republished by defendants, and through their agents and employees—including to recipients in the community and third persons who had no need or desire to know—in order to justify terminating Morris's employment. The publications were and continue to be published and republished to recipients in the community. These foreseeable republications include those Morris was forced to republish after her termination, in an attempt to obtain an explanation of the basis for the allegations in order to refute them and reverse the termination decision. Morris sought damages for the publications and all foreseeable republications up to the time of trial. The statements expressly and impliedly conveyed that Morris was incompetent and a poor employee. The statements were asserted as fact, not opinion, but none of the statements are true. The manner in which the statements were published abused any conditional privilege, because they were made with ill will and an intent to injure Morris to justify the illegal termination. Defendants' investigation was nonexistent and reckless, resulting in the publication of the defamatory statements.

Defendants were aware that no investigation supported the unsubstantiated and false statements, which defendants knew were the product of hostile witnesses. They published the statements with the intent to discriminate, harass, retaliate, and injure Morris's reputation and employability. Morris was injured, including suffering severe emotional distress and loss of employment.

Anti-SLAPP Motion and Supporting Evidence

The Regents, Mack, and Justiss filed an anti-SLAPP motion with respect to the cause of action for defamation. They argued that the claim was based entirely on communications made during an official investigation of internal policy violations. The Regents have rulemaking and policymaking power, their policies and procedures have the force and effect of statute, and as a result, their investigation of policy violations qualified as an official proceeding under the anti-SLAPP statute.

In support of their anti-SLAPP motion, they submitted a request for judicial notice of UCLA Hospital System's human resources policy entitled, "Disruptive Behavior Among Employees." The policy states that UCLA Hospital System will respond to every reported incident of disruptive, threatening, or violent behavior. It lists examples of inappropriate behavior by employees. Complaints are reported through the supervisory chain of command and human resources or security. Once an investigation is complete, a recommendation will be submitted for disposition, and resources, such as counseling services, are listed.

Defendants filed Mack's declaration in support of the anti-SLAPP motion as to the following facts. Mack was the Interim Director of UCLA Medical Coding from December 2012 to October 2014. On May 9, 2013, Morris and another employee had an argument. Medical Coding Manager Pearley Bautista witnessed the argument. Mack intervened and told the employees to leave for the day. Mack notified her supervisor that Morris had placed her hand on Mack's shoulder and shoved her as she walked by. At the direction of her supervisor, Mack contacted Justiss, who was the Director of Employee

Relations and Support for UCLA Hospital System. The Regents initiated an investigation of the altercation to determine whether Morris violated the Regents's policy concerning disruptive behavior among employees. Morris was placed on paid investigatory leave through June 14, 2013.

It was determined that Morris violated the policy through verbal abuse of a coworker and physical contact with her supervisor. Mack and Bautista communicated the findings of the investigation to Morris and the intent to suspend her for two weeks without pay. A meeting was held to allow Morris an opportunity to respond, after which Mack and Bautista advised Morris in writing that the suspension would stand. When Morris returned to work on July 12, 2013, Mack, Morris, and Bautista met again. Morris was belligerent and insubordinate during the meeting, refused to attend training classes to improve her conduct, and refused a suggestion to attend voluntary counseling. As a result, Mack and Bautista advised Morris in writing of the intent to dismiss her. Morris had an opportunity to respond at a meeting with Justiss, Mack, Bautista, and Mack's supervisor. Following the meeting, the decision was made to uphold the dismissal and Morris's employment was terminated effective August 13, 2013. Mack and Bautista sent Morris a letter of termination based on demonstrated willful insubordination.

Opposition to Motion and Trial Court Ruling

Morris filed an opposition to the motion to strike. She argued that no official proceeding was involved. Her argument relied primarily on the allegations of the complaint and defendants' evidence. She did not discuss any specific defamatory statement. In support of her opposition, Morris filed her attorneys' declarations. These declarations are not included in the record on appeal.

A hearing was held on November 20, 2014. No reporter's transcript or settled statement is part of the record on appeal. The court took the matter under submission. On November 26, 2014, the court issued a minute order granting the anti-SLAPP motion. Morris filed a timely notice of appeal on May 18, 2015.

DISCUSSION

Standard of Review and Statutory Scheme

“Courts construe the anti-SLAPP statute broadly to protect the constitutional rights of petition and free speech. [Citations.] In ruling on an anti-SLAPP motion, the trial court conducts a two-part analysis: The moving party bears the initial burden of establishing a prima facie case that the plaintiff’s cause of action arises from the defendant’s free speech or petition activity, as defined in the anti-SLAPP statute. (§ 425.16, subs. (b)(1), (e); *Equilon Enterprises v. Consumer Cause, Inc.*, *supra*, 29 Cal.4th at p. 67.) If the moving party meets its burden, the burden shifts to the plaintiff to establish a probability that he or she will prevail on the merits. (§ 425.16, subd. (b)(1); *Flatley v. Mauro* (2006) 39 Cal.4th 299, 314 (*Flatley* .))” (*Anderson v. Geist* (2015) 236 Cal.App.4th 79, 84.)

A defendant meets its threshold burden of demonstrating that a cause of action arises from protected activity by showing that the act or acts underlying the claim fit one or more of the four categories described in section 426.16, subdivision (e). (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) These categories include “any written or oral statement or writing” that is “made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law” (§ 425.16, subd. (e)(1)), “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” (*id.* at subd. (e)(2)), or “made in a place open to the public or a public forum in connection with an issue of public interest” (*id.* at subd. (e)(3)), as well as “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” (*id.* at subd. (e)(4)). The instant case involves subdivisions (e)(1) and (e)(2) of section 425.16.

We review the trial court’s order granting an anti-SLAPP motion de novo. (*City of Costa Mesa v. D’Alessio Investments, LLC* (2013) 214 Cal.App.4th 358, 371.) “In our

evaluation of the trial court's order, we consider the pleadings and the supporting and opposing affidavits filed by the parties on the anti-SLAPP motion. In doing so, we do not weigh credibility or determine the weight of the evidence. Rather, we accept as true the evidence favorable to the plaintiff and evaluate the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law. [Citation.]” (*Bailey v. Brewer* (2011) 197 Cal.App.4th 781, 788.)

Statements Before an Official Proceeding

Morris contends defendants' investigation of employment policy violations was not an official proceeding under the anti-SLAPP statute. This is incorrect.

The defendants submitted evidence that the employment policies in this case were established by the Regents, which is a constitutional entity having quasi-judicial powers. (Cal. Const., art. IX, § 9; *Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 319-321.) “The Regents ‘have rulemaking and policymaking power in regard to the University; their policies and procedures have the force and effect of statute.’ (*Kim v. Regents of University of California* (2000) 80 Cal.App.4th 160, 165.) Statutory hearing procedures qualify as official proceedings authorized by law for [section] 425.16 purposes. (E.g., *Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192 (*Kibler*) [hospital peer review procedure qualified as official proceeding under [section] 425.16 because procedure was required by Bus. & Prof. Code statutes].)” (*Vergos v. McNeal* (2007) 146 Cal.App.4th 1387, 1396, fn. omitted.)

In this case, defendants' investigation was an official university proceeding based on perceived policy violations. Any statements made in the context of that proceeding were constitutionally protected, and litigation arising from them would be subject to an anti-SLAPP motion. (See *Vergos v. McNeal, supra*, 146 Cal.App.4th 1387, 1390-1392, 1396-1397 [university's statutory hearing procedures qualify as “official proceedings” under section 425.16 and a cause of action based on statements made by a hearing officer during such a proceeding was properly stricken].)

In response to defendants' evidence that the cause of action was based on statements made in connection with an issue under review in an official proceeding, Morris did not provide evidence concerning the policy at issue, the investigation procedures, or any statements. Defendants established that the statements at issue were protected by the anti-SLAPP statute and Morris did not submit any evidence to the contrary. The trial court properly concluded that the anti-SLAPP statute applied based on the evidence presented. The burden shifted to Morris to show a probability of prevailing on the merits, and again, she submitted no evidence of any defamatory statements whatsoever. On appeal, she does not attempt to argue that she demonstrated a probability of prevailing. The trial court correctly granted the motion to strike the cause of action for defamation.

DISPOSITION

The order striking the cause of action for defamation is affirmed. Respondents Deneen Mack, Jim Justiss, and the Regents of the University of California are awarded their costs on appeal.

KRIEGLER, Acting P. J.

We concur:

BAKER, J.

KUMAR, J.*

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