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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

S&B SERVICES, INC., et al., Plaintiffs and Appellants, v. SERVICE FIRST OF NORTHERN CALIFORNIA et al., Defendants and Respondents.	C067084 (Super. Ct. No. 39200800194066CUBTSTK)
SAN JOAQUIN SAFETY COUNCIL et al., Plaintiffs and Appellants, v. SERVICE FRIST OF NORTHERN CALIFORNIA et al., Defendants and Respondents.	C067193 (Super. Ct. No. 39200800194070CUBTSTK)

In both of these cases, plaintiffs sought to hold defendant Service First of Northern California (Service First) and one of its officers, defendant Sharon Simas, liable for statements

Simas made before the San Joaquin County Board of Supervisors (the board) in seeking a recommendation from the board for the licensure of Service First as a driving-under-the-influence program in San Joaquin County. The trial court granted summary judgment to Service First and Simas on several grounds, including that the actions complained of were absolutely privileged under subdivision (b) of Civil Code section 47 (section 47(b)).

On appeal, plaintiffs have failed to show any error in the trial court's application of section 47(b). Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The State Department of Alcohol and Drug Programs (the department) is responsible for licensing "driving-under-the-influence" (DUI) programs in each county upon recommendation by the county board of supervisors. (Health & Saf. Code, §§ 11750, 11752, 11836; Cal. Code Regs., tit. 9, § 9801.) As part of its recommendation that the department license a new program, the county board of supervisors must "include a statement assuring there is a need for a new DUI program in the county and assuring that the establishment of an additional DUI program will not jeopardize the fiscal integrity of existing licensed DUI programs." (Cal. Code Regs., tit. 9, § 9801.5, subd. (a)(1).)

In February 2008, Simas, a vice-president and administrator with Service First, sent a letter to the board indicating that Service First was seeking a recommendation from the board that the department license Service First as a DUI program in San

Joaquin County. Based on a recently completed needs assessment, however, the county initially responded that it could not recommend licensure for Service First because it could not find there was demonstrated need for a new DUI program or that the establishment of an additional program would not jeopardize the fiscal integrity of existing licensed DUI programs.

Service First disagreed with the conclusions in the needs assessment. Accordingly, in July 2008 Simas attended a meeting of the board on behalf of Service First to present evidence that there *was* a need for a new DUI program and that the establishment of an additional program would *not* jeopardize the fiscal integrity of existing licensed DUI programs. At the meeting, the board agreed Simas had refuted the county's needs assessment, and the board adopted an order recommending that the department license Service First as a DUI program in the county.

Thereafter, plaintiffs S&B Services Inc. and San Joaquin Safety Council -- both of which were operating existing DUI programs in the county -- sued Service First and Simas (among others).[1] The gist of their complaints was that Simas's representations to the board were false and Service First's intent in obtaining a license as a DUI program was to drive plaintiffs out of business.

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[1] The plaintiffs in the S&B Services case are S&B Services Inc. and two of its officers and directors, Lewis Steele and Sam Beasley. The plaintiffs in the San Joaquin Safety Council case are San Joaquin Safety Council and one of its officers and directors, Lynndee Riley. We refer to all of the plaintiffs jointly as plaintiffs.

Service First and Simas moved for summary judgment in both cases, arguing (among other things) that they could not be held liable because Simas's provision of information to the board was absolutely privileged under section 47(b). The trial court agreed, explaining as follows: "In this case, all the actions complained of relate to Service First's efforts to obtain a recommendation from the County Board of Supervisors for a DUI program license. The complaints relate to the presentation that Simas made to the Board and the allegedly inaccurate information that Simas provided to the Board in order to convince the Board that there was a need for a new DUI program and that a new DUI program would not jeopardize the fiscal integrity of the existing providers. The process to obtain the recommendation of the Board is an official proceeding under Civil Code § 47. Furthermore, all of the comments made and information provided by Service First and Simas related directly to the efforts to obtain the Board's recommendation for a license. Therefore, the actions complained of are absolutely privileged under Civil Code § 47. Because the actions are absolutely privileged, all of the claims in the complaint are barred."

Plaintiffs timely appealed in both cases.

DISCUSSION

I

Standard Of Review

A defendant may move for summary judgment "if it is contended that the action has no merit . . . ." (Code Civ. Proc., § 437c, subd. (a).) "A defendant . . . has met his or

her burden of showing that a cause of action has no merit if that party has shown . . . that there is a complete defense to that cause of action. Once the defendant . . . has met that burden, the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to that . . . defense . . . .” (*Id.*, subd. (p)(2).) “The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (*Id.*, subd. (c).)

“Because the trial court’s determination [on a motion for summary judgment] is one of law based upon the papers submitted, the appellate court must make its own independent determination regarding the construction and effect of the supporting and opposing papers.” (*Hernandez v. Modesto Portuguese Pentecost Assn.* (1995) 40 Cal.App.4th 1274, 1279.)

II

Separate Statements

Plaintiffs contend the trial court abused its discretion in granting summary judgment without requiring Service First and Simas to comply with certain procedural requirements applicable to the separate statement of undisputed facts. Specifically, plaintiffs complain that the separate statements in both cases did not “‘separately identify each cause of action, claim, issue of duty, or affirmative defense . . . .’” (See Cal. Rules of Court, rule 3.1350(d).)

There was no abuse of discretion. In each case, Service First and Simas sought summary judgment or, in the alternative, summary adjudication of *the claim for punitive damages*. "[T]he requirement for separately identified issues is required only for '[s]upporting and opposing separate statements in a motion for summary adjudication . . . .' (Rule 3.1350(h); see also rule 3.1350(b).)" (*Truong v. Glasser* (2009) 181 Cal.App.4th 102, 118.) Here, the separate statement in each case separately identified the "Punitive Damages Claim" as the subject of the motion for summary adjudication. Accordingly, the separate statements complied with the applicable procedural requirements.

III

Absolute Immunity Under Section 47(b)

Section 47(b) provides that (with certain exceptions not applicable here) a publication or broadcast made "[i]n any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable [by mandamus]" is "privileged." (Civ. Code, § 47, subd. (b).) This privilege is "absolute and unaffected by the presence of malice." (*Tiedemann v. Superior Court* (1978) 83 Cal.App.3d 918, 924.) "The descriptive statutory phrase 'in any other official proceeding authorized by law' has been broadly interpreted to include those proceedings which resemble judicial and legislative proceedings such as administrative boards and quasi-judicial and quasi-legislative proceedings. [Citation.] In order that the privilege apply, it is unnecessary that the

. . . matter be relevant or material to an issue before the tribunal but need only have some proper connection or relation to the proceeding and in achieving its objectives." (*Id.* at pp. 924-925.)

Here, the trial court concluded that a communication in a proceeding in front of a county board of supervisors in which an applicant seeks the board's recommendation for licensure by the department as a DUI program qualifies for the absolute immunity conferred by section 47(b). Plaintiffs have failed to show any error in that conclusion. In fact, although they noted in their opening briefs that this was one of the bases for the grant of summary judgment in each case, in neither brief did plaintiffs address this issue, let alone demonstrate reversible error.

In their reply briefs, plaintiffs offer only this argument on the trial court's application of section 47(b): "While the trial court accepted [Service First's and Simas's] argument, it inappropriately failed to address the fact that the litigation privilege of Civil Code §47 is applied to eliminate threats of liability for communications made during truth seeking proceedings; judicial, quasi-judicial, legislative and other official proceedings." Plaintiffs then set out a quote from *Silberg v. Anderson* (1990) 50 Cal.3d 205, 213, in which the Supreme Court described the policies furthered by section 47(b). Plaintiffs then "respectfully point out that the litigation privilege has not [been] and is not a vehicle to disseminate fraud and deception," and they argue that the claim of privilege here "cannot be maintained."

Even if we consider this argument, which plaintiffs make for the first time in their reply brief, we find nothing in it showing any error by the trial court. It does not matter whether Simas's statements to the board were "a vehicle to disseminate fraud and deception"; they were made in the course of an official proceeding authorized by law and as such were absolutely privileged. Accordingly, the trial court properly granted summary judgment in both cases.

DISPOSITION

The judgments are affirmed. Service First and Simas shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

ROBIE, J.

We concur:

BLEASE, Acting P. J.

HULL, J.