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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

DANIEL M. MEYERS,

Plaintiff and Respondent,

v.

SCOT TEMPESTA et al.,

Defendants and Appellants.

D060825

(Super. Ct. No. 37-2010-00057972-
CU-DF-NC)

APPEAL from an order of the Superior Court of San Diego County, Earl H. Maas III, Judge. Affirmed.

Daniel Meyers brought a defamation lawsuit against an owner of a Web site (Sailing Anarchy, Inc.), its publisher (Scot Tempesta), and one of its editors (Alan Block). On appeal, defendants challenge the court's denial of their anti-SLAPP motion seeking to dismiss a cause of action that was based on an alleged defamatory statement appearing on Sailing Anarchy's Web site. (Code Civ. Proc., § 425.16 (§ 425.16).) Defendants contend the court erred in finding there was a reasonable probability Meyers would prevail in proving this cause of action. We reject this contention and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Meyers is the chief executive officer of a publicly traded company and president of a federally chartered bank holding company. His business is highly regulated and he is subject to a significant amount of regulatory scrutiny and investigation. Meyers also serves on several philanthropic boards and donates time to charitable organizations. In his free time, Meyers participates in the sport of sailing and commits a significant amount of time and resources to the sport.

Sailing Anarchy owns an interactive Web site (sailinganarchy.com) "that includes daily original content including articles, interviews, editorials, rumors, and extremely active message boards and forums where bloggers and the public have the opportunity to discuss typical issues about sailing." The Web site has more than 30,000 registered members and receives more than one million views each month.

In August 2010, Meyers filed a complaint against Sailing Anarchy, its publisher (Tempesta), and an editor (Block), alleging three causes of action, each of which was based on a separate alleged defamatory statement made by one or more of the defendants.

In the first cause of action, Meyers alleged defendants published on Sailing Anarchy's Web site a photograph with a caption that included a reference to Meyers as a "multi-millionaire grifter." The photograph appeared on the Web site's home page and shows Meyers (a very large man) sitting in a boat owned by the Alinghi racing syndicate. The photograph is entitled "Big Fun" and the caption reads:

"Alinghi have claimed that they won't be using water ballast for Cheezilla, and today we learned of their new movable ballast solution. Called 'Ballast The Hutt,' the new system uses the heft of

multi-millionaire grifter Dan Meyers to create righting moment as well as to infuse Alinghi with much-needed capital for the affair. The system relies on hydraulic power to slide Meyers athwartships on the Doug Lord-designed HuttBench® and adds some 50 tons of righting moment to the Swiss catamaran. Early tests were canceled when Meyer ate two trimmers during a sailing break. 'I thought they were bacon sandwiches,' said Meyer. Sources report George Lucas considering legal action against Alinghi . . .

"Pic courtesy of Anarchist Boba Fett. And [this pic](#) shows the quality of Alinghi's PR effort."

Meyers alleged this publication was defamatory because it accused him in a derogatory fashion of being a "grifter" and that readers of the Web site would interpret the "grifter" term to mean " 'a con artist, swindler, dishonest gambler or the like' "

Second, Meyers alleged that Drew Freides, a member of the San Diego Yacht Club, asked defendant Tempesta (in a private conversation) why he called Meyers a " 'grifter,' " and Tempesta allegedly responded by stating that Meyers "was a 'white collar criminal' and that he had 'stolen millions of dollars' in his business operations."

Third, Meyers alleged Tempesta wrote an email to Marian Martin stating that "Meyers is 'a white collar criminal who stole millions.' "

With respect to all three causes of action, Meyers alleged defendants' statements were defamatory in that they falsely described Meyers as engaging in illegal and/or wrongful conduct and the true facts are that Meyers is not a "grifter," has never "stolen anything," and has never engaged in any white collar criminal activities. Meyers also alleged each statement exposed him to contempt, ridicule, hatred and obloquy, and resulted in damages to his reputation and emotional distress.

Defendants moved to strike all three causes of action under the anti-SLAPP statute. Defendants argued the anti-SLAPP statute applied to each cause of action and Meyers could not show a probability of prevailing on his claims. With respect to Meyers's probability of prevailing on the first cause of action, defendants argued the "grifter" reference was not defamatory because it would not be understood by readers of the Web site as stating actual facts about Meyers that are provably false. They argued the reference fell within "the realm of 'classic rhetorical hyperbole which "cannot [']reasonably [be] interpreted as stating actual facts.' " " " They also argued the term "grifter" has several meanings, only one of which was derogatory.

In support of these arguments, defendant Tempesta submitted his declaration stating that the purpose of the sailinganarchy.com Web site is to provide an alternative to other sailing publications and Internet sites that are generally "filled with mundane stories and focused primarily on the elite participants who dominate the headlines of the sport, as opposed to the 'common man' who also participates in sailing and racing, albeit not always at the level of the America's Cup." He stated that "most sailing publications and boating reviews are forced to compromise their content to ensure that sponsors and advertising revenue are not jeopardized. Thus, I attribute Sailing Anarchy's success to its mantra[:] 'Where the Status Quo Blows.' I thought the best way to make our website more distinctive was to give it an edgy and provocative style, and present ou[r] views with topics, ideas, and critiques that are generally not written about in other sailing publications or websites. [¶] . . . Sailing Anarchy also takes pride in its Message Board,

where robust discussions are encouraged and viewer comments are not ignored or edited but celebrated."

With respect to the "Big Fun" photograph and caption, Tempesta stated: "This photograph and caption were published as a joke regarding Meyers' weight, and had nothing to do with obtaining money or property by fraud or deceit as suggested in [the] Complaint. The caption was not making a factual statement and was not meant for the listeners to take literally because its literal interpretation is nonsensical. I know that our readers interpreted the statement to be a joke since the countless corresponding message board posts commenting on [the article] expressed their amusement and further discussed Meyers' weight. Needless to say, while the caption was probably sophomoric and in bad taste, it was in no way . . . intended to be defamatory."

Defendants also submitted copies of message board posts responding to the Big Fun photograph, most of which treated the photograph and caption as a joke and discussed Meyers's weight. Defendants additionally submitted various articles discussing Meyers's role in the student loan business and federal government investigations directed towards Meyers's former company.

In opposing the anti-SLAPP motion, Meyers argued that even assuming the anti-SLAPP statute governed the first cause of action, he had a probability of prevailing on this claim based on a showing that the "grifter" accusation was defamatory, false, and would result in substantial damage to his reputation.

With respect to the meaning and defamatory nature of the "grifter" term, Meyers submitted the declaration of Edward Finegan, a Professor Emeritus of Linguistics and

Law at University of Southern California School of Law. Dr. Finegan stated that the verb form of the word ("grift") is defined in standard dictionaries to mean: " 'to obtain (money) illicitly (as in a confidence game)' or 'to acquire money or property illicitly' " and " 'to engage in swindling or cheating.' " Dr. Finegan stated that he conducted a survey of the use of the word " 'grifter' " by numerous American newspapers, and determined newspapers typically use the "grifter" term "with words like 'scam,' 'fooled,' 'fraud,' 'false,' 'dishonest,' 'cheating,' 'con,' and 'fleece.' In other words, 'grifter' as used in American newspapers is a scam artist whose fraudulent activity fleeces the innocent of their money or goods by fooling them." According to Professor Finegan, in this common usage, a grifter generally refers to "a dishonorable person."

Professor Finegan also discussed the word "grifter" as it was used in the Big Fun photograph caption:

"In the matter at issue here, 'grifter' appears in a caption under a photograph. That caption includes the word 'grifter' in this sentence: 'Called "Ballast The Hutt," the new system uses the heft of multi-millionaire grifter Dan Meyers to create righting moment as well as to infuse Alinghi with much-needed capital for the affair.' [¶] . . . For an ordinary reader, it would be clear that the sentence ridicules Dan Meyers's physical weight. The words associated with that effect include 'ballast,' 'heft,' and the more technical 'righting moment'; those terms mirror the photograph, in which Meyers's physical bulk is apparent. In addition, the sentence does a second thing, which is not mirrored in the photograph but is unmistakably conveyed by the language of the sentence. The sentence characterizes Meyers as a 'multi-millionaire grifter' whose 'heft' also 'infuse[s] Alinghi with much needed capital.'

". . . Thus, besides satirizing Meyers' size and weight . . . the caption notes that Meyers brings 'much needed capital' to 'the affair' ('infuse' and 'much-needed capital' are sober expressions that convey a serious tone to this other observation). . . Ordinary readers would

be completely justified in interpreting this word to mean that the writer or the website on which the photo and caption appear are claiming that the 'multi-millionaire' (Meyers) has gotten his money illicitly, as by trickery or fraudulence. However, in contrast to the ridicule and satire involved in reference to his physical 'heft,' calling Meyers a 'multi-millionaire grifter' leaves no doubt that the caption alleges that his wealth has been gained illicitly.

" . . . Further, the reference to 'Ballast the Hutt' in the quoted sentence above echoes the name 'Jabba the Hutt,' the 'Star Wars' alien characterized by Wikipedia as 'a 600-year old Hutt crime lord and gangster who employs a retinue of criminals, bounty hunters, smuggle[r]s, assassins, and bodyguards to operate his criminal empire' . . . As the Wikipedia entry says about the name, in popular culture it is 'used as a satirical literary device and a political caricature to underscore negative qualities such as morbid obesity and corruption.' It is of course just those two qualities that the photo and its caption aim to indicate in Dan Meyers." (Fn. and underscoring omitted.)

Dr. Finegan concluded it was his professional opinion that readers of the Sailing Anarchy Web site would reasonably interpret the "multi-millionaire grifter" reference "as a straightforward factual accusation that Meyers gained his wealth by fraud or other illicit means."

With respect to the falsity of the "grifter" statement, Meyers submitted his own declaration in which he denied he has engaged in any wrongful conduct or committed any crimes. He also discussed that he has successfully undergone rigorous government reviews based on his high-level positions with highly-regulated businesses. He asserted that the " 'grifter' " accusation was specifically targeted to harm him both professionally and socially because many of his business associates are also members of the sailing community. Meyers also presented the deposition transcripts of defendants Tempesta and Block in which both defendants acknowledged that at the time the Big Fun

photograph and caption were published on the Web site, they did not believe Meyers had obtained money by fraud, cheated anybody out of money, stole any money, or that Meyers was a white collar criminal.

Meyers also produced evidence showing that in response to a question as to why he had charged Meyers with being a "grifter," defendant Tempesta told a third party that Meyers was a " 'white collar criminal' " who had " 'stolen millions of dollars.' " Meyers also proffered a copy of an email thread in which Tempesta (or another Sailing Anarchy editor) stated that Meyers is "a while collar criminal who stole millions" and that he "gives a lot of the money that he [has] stolen away—easy to be generous with opm [other people's money]!"

After considering the parties' submissions, the court denied defendants' anti-SLAPP motion. As to the second and third causes of action, the court found they were not subject to the anti-SLAPP statute because they were not made in a public forum and did not involve issues of public interest. With respect to the first cause of action, the court found the claim was governed by the anti-SLAPP statute, but that Meyers proved a probability of prevailing on the merits.

Defendants appeal.

DISCUSSION

I. Anti-SLAPP Statute Legal Standards

Under section 425.16, a court "shall" grant a defendant's motion to strike a cause of action "arising from" an act "in furtherance of" the defendant's constitutional petition or free speech rights unless the plaintiff establishes a probability of prevailing on the

claim. (§ 425.16, subd. (b)(1).) To promote participation in matters of public significance, courts must construe this statute "broadly" in favor of the moving party. (§ 425.16, subd. (a).)

In ruling on an anti-SLAPP motion, the trial court engages in a two-step process. (*Taus v. Loftus* (2007) 40 Cal.4th 683, 703.) First, the court decides whether the defendant has met its burden to show the challenged cause of action is one arising from constitutionally protected activity as defined in the statute. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) Second, if this showing has been made, the court must determine whether the plaintiff has met its burden to show a probability of prevailing on the claim. (*Ibid.*)

To satisfy the second prong, " 'the plaintiff "must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." [Citations.] For purposes of this inquiry, "the trial court considers the pleadings and evidentiary submissions of both the plaintiff and the defendant . . ." ' " (*Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 273.) Although " 'the court does not *weigh* the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim." [Citation.] In making this assessment it is "the court's responsibility . . . to accept as true the evidence favorable to the plaintiff. . . ." [Citation.] The plaintiff need only establish that his or her claim has

"minimal merit" [citation] to avoid being stricken as a SLAPP.' [Citations.]" (*Id.* at pp. 273-274.)

On appeal, we engage in the same analysis as the trial court and we apply a de novo review standard. (See *Annette F. v. Sharon S.* (2004) 119 Cal.App.4th 1146, 1159.)

II. *Defamation Legal Principles*

A defamation claim "requires proof of a false and unprivileged publication that exposes the plaintiff 'to hatred, contempt, ridicule, or obloquy, or which causes him [or her] to be shunned or avoided, or which has a tendency to injure him [or her] in his occupation.'" (*McGarry v. University of San Diego* (2007) 154 Cal.App.4th 97, 112 (*McGarry*)). "[T]o state a defamation claim that survives a First Amendment challenge, [t]he plaintiff must present evidence of a statement of fact that is provably false." (*Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 809 (*Seelig*); *Milkovich v. Lorain Journal Co.* (1990) 497 U.S. 1, 20.)

"Statements do not imply a provably false factual assertion and thus cannot form the basis of a defamation action if they cannot 'reasonably [be] interpreted as stating actual facts' about an individual.' [Citations.] Thus, 'rhetorical hyperbole,' 'vigorous epithet[s],' 'lusty and imaginative expression[s] of . . . contempt,' and language used 'in a loose, figurative sense' have all been accorded constitutional protection. [Citations.]" (*Ferlauto v. Hamsher* (1999) 74 Cal.App.4th 1394, 1401 (*Ferlauto*)). "The dispositive question . . . is whether a reasonable trier of fact could conclude that the published

statements imply a provably false factual assertion." (*Seelig, supra*, 97 Cal.App.4th at p. 809.)

"To ascertain whether the statements in question are provably false factual assertions, courts consider the ' "totality of the circumstances." ' " (*Seelig, supra*, 97 Cal.App.4th at p. 809.) " ' "First, the language of the statement is examined. For words to be defamatory, they must be understood in a defamatory sense. . . . [¶] Next, the context in which the statement was made must be considered. . . . [¶] This contextual analysis demands that the courts look at the nature and full content of the communication and to the knowledge and understanding of the audience to whom the publication was directed." ' " (*Id.* at pp. 809-810; see *Balzaga v. Fox News Network, LLC* (2009) 173 Cal.App.4th 1325, 1337-1338 (*Balzaga*).

"This crucial question of whether challenged statements convey the requisite factual imputation is ordinarily a question of law for the court." (*Seelig, supra*, 97 Cal.App.4th at p. 810.) The issue is " 'whether a reasonable fact finder could conclude the published statement declares or implies a provably false assertion of fact' " (*McGarry, supra*, 154 Cal.App.4th at p. 113; see *Summit Bank v. Rogers* (2012) 206 Cal.App.4th 669, 696 (*Summit Bank*)). " 'Only once the court has determined that a statement is reasonably susceptible to such a defamatory interpretation does it become a question for the trier of fact whether or not it was so understood.' . . ." (*Summit Bank, supra*, 206 Cal.App.4th at p. 696.) If the statement is susceptible of both an innocent and a libelous meaning, the jury must decide how the statement was understood. (*McGarry, supra*, 154 Cal.App.4th at p. 113.)

III. *Analysis*

The record before us supports that the word "grifter" can be interpreted in a defamatory sense. The word "grifter" is slang and has various meanings, including "a swindler, dishonest gambler, or the like." (Random House Unabr. Dict. (2d ed. 1993), p. 840.) Based on dictionary definitions and Dr. Finegan's analysis of the term's common usage, there is a factual basis for concluding that an average reader of the Sailing Anarchy Web site would understand the word "grifter" means someone who is false or dishonest, and specifically a "scam artist" or a "con artist," who obtained his money through illicit means or by trickery.

On appeal, defendants do not challenge this conclusion, but argue that when considering the language in context of the entire photograph and caption, a reasonable reader of the Sailing Anarchy Web site would not interpret the term as stating actual facts about Meyers. They say "the totality of the photo caption and the context of the Sailing Anarchy website and its readership make abundantly clear that the term 'grifter' was used in a satirical, hyperbolic sense, and not as an assertion of fact that the readership would reasonably be expected to believe to be true." They argue that because the photograph caption contains many satirical and sarcastic references (e.g., "assert[ing] that Mr. Meyers' body is the ballast system for the Alinghi racing yacht, that Mr. Meyers adds 50 tons (100,000 pounds) of righting moment to the yacht, that Mr. Meyers ate two of the Alinghi crew members . . ."), no reasonable person would believe anything in the article is true.

We agree that in evaluating a defamation claim, the alleged defamatory statement must be read in context. " ' "This contextual analysis demands that the courts look at the nature and full content of the communication and to the knowledge and understanding of the audience to whom the publication was directed. [Citation.] ' "[T]he publication in question must be considered in its entirety; [i]t may not be divided into segments and each portion treated as a separate unit.' [Citation.] It must be read as a whole in order to understand its import and the effect which it was calculated to have on the reader [citations], and construed in the light of the whole scope [of the publication]. [Citation.]" ' ' ' ' ' (Balzaga, supra, 173 Cal.App.4th at p. 1338.)

But when interpreting the phrase "multi-millionaire grifter" under these principles, we do not agree with defendants that the only reasonable interpretation is that the accusation was merely hyperbole and/or a "joke." Although the primary thrust of the article was to satirize or poke fun at Meyers's body size, there are also separate references to Meyers's wealth and his plan to "infuse . . . much-needed capital" into the Alinghi sailing syndicate. It is in this specific context that the "grifter" comment was made. As Professor Finegan points out, these financial references were communicated using terms of an objective nature and thus could be taken as a serious charge by a reasonable reader. Moreover, the "multi-millionaire grifter" accusation is substantively unrelated and unnecessary to the jokes about Meyers's weight, suggesting that the grifter charge was not part of the sarcasm directed at Meyers's physical appearance. And to the extent there is a connection, the weight jokes underscore the idea that Meyers is an untrustworthy, unsavory individual who is associated with criminal activity. As Professor Finegan

noted, Jabba the Hutt is a Star Wars movie character who is popularly known as a " 'crime lord and gangster who employs a retinue of criminals, bounty hunters, smuggle[r]s, assassins, and bodyguards to operate his criminal empire.' "1 (Underscoring omitted.)

The conclusion that a reader could reasonably believe the "grifter" charge was a true factual statement is bolstered by the evidence showing that when Tempesta (the Web site publisher) was asked why he accused Meyers of being a grifter, Tempesta allegedly responded that Meyers is a " 'white collar criminal' " who has " 'stolen millions of dollars.' " Meyers also presented evidence showing that Tempesta made a similar charge in an email to another sailing enthusiast. Although there is no evidence that readers of the Web site article heard or read Tempesta's private comments, these remarks support an inference that because the article's publisher was intending to communicate the criminal charge, such an interpretation of the "grifter" term would be reasonable. Tempesta has denied making the "white collar criminal" statement, but for purposes of our evaluation of an anti-SLAPP ruling, we must assume the truth of the opposing party's evidence.

In urging us to reverse the court's ruling, defendants rely on a decision that is factually distinguishable. (*Ferlauto, supra*, 74 Cal.App.4th 1394.) In *Ferlauto*, an attorney (Ferlauto) represented a movie director who brought an action against a movie

¹ Defendants objected to Dr. Finegan's declaration in the proceedings below. However, the court overruled these objections and defendants do not challenge the court's evidentiary ruling on appeal. Thus, they have forfeited any challenge to the expert opinion in these anti-SLAPP proceedings. (See *Hawran v. Hixson, supra*, 209 Cal.App.4th at p. 294, fn. 12.) This conclusion does not preclude defendants from challenging the expert opinion at trial or other future proceedings in the case.

producer. (*Id.* at p. 1397.) The movie producer later wrote a book in an "exaggerated, irreverent and attention-grabbing style." (*Id.* at p. 1398.) In the book, the movie producer repeatedly criticized the lawsuit and Ferlauto for bringing the action. (*Ibid.*) The producer referred to Ferlauto variously as "Kmart Jonnie Cochran," "creepazoid attorney," and "loser wannabe lawyer," and stated that the lawsuit was "spurious" and not an ethical one. (*Ibid.*) Ferlauto brought a defamation suit against the producer/author, asserting that these statements implied that he is an unethical attorney who abuses legal procedures to harass his opponents. (*Ibid.*)

The *Ferlauto* court held that a reasonable person would not interpret the alleged defamatory statements as provable factual assertions. (*Ferlauto, supra*, 74 Cal.App.4th at pp. 1401-1406.) The court reasoned that the statements were "classic rhetorical hyperbole" (*id.* at p. 1404), particularly because they were made by a participant in a lawsuit against an adversarial opponent. (*Id.* at pp. 1401-1403.) The court explained: "Part of the totality of the circumstances used in evaluating the language in question is whether the statements were made by participants in an adversarial setting" and that when discussing her opponent's attorney "no reader would expect [the producer] to suddenly change her tone A reasonable reader would expect exactly what [the author] provided—her highly partisan opinions of the lawsuit and her opponents, including attorney Ferlauto." (*Id.* at pp. 1401, 1402-1403.)

Ferlauto stands for the proposition that when statements are used in an adversarial setting, the comments are likely to be interpreted as opinion or rhetorical hyperbole incapable of being proved true or false. However, in this case, there is no similar

evidence of an adversarial relationship between Meyers and defendants in which a reasonable reader of the Web site would expect the "multi-millionaire grifter" assertion to be a "highly partisan opinion[]" between two opponents. (*Ferlauto, supra*, 74 Cal.App.4th at p. 1403.) At most, defendants presented evidence showing that the purpose of the Sailing Anarchy Web site is to provide an informal, "edgy," and "provocative" forum for discussing sailing issues. However, this evidence in and of itself does not show that a reader of the Web site would be likely to understand that the "grifter" accusation made against Meyers should be interpreted as merely editorial opinions from a partisan adversary rather than an assertion of objective fact. To the extent additional evidence exists on these issues, these facts may be relevant in any later proceedings on this issue. But in ruling on the anti-SLAPP appellate issues, we are limited to the evidentiary materials in the record before us.

We also find defendant's reliance on a Louisiana federal court case to be unhelpful. (*Russo v. Conde Nast Publications* (E.D.La. 1992) 806 F.Supp. 603 (*Russo*)). In *Russo*, the plaintiff brought a defamation action against the publisher of Gentlemen's Quarterly magazine, based on an article asserting that a New Orleans prosecution regarding a conspiracy to assassinate President Kennedy was flawed and was based on "flimsy evidence." (*Id.* at p. 604.) The article referred once to the plaintiff, who had been a witness in the assassination-conspiracy trial, as an "'insurance salesman-cum grifter.'" (*Id.* at p. 605, italics omitted.) Based on that single reference, Russo sued the magazine publisher for defamation.

Applying Louisiana law, the *Russo* court found the grifter charge was not defamatory per se because it was subject to many meanings. (*Russo, supra*, 806 F.Supp. at p. 608.) The court also stated, in dicta, that the phrase was not "defamatory as a matter of law" because the grifter word is "informal in nature, and does not make a specific charge of any kind concerning [the plaintiff]." (*Id.* at p. 609.) In this regard, the court commented: "Although there is no question but that the [grifter] term does not constitute flattery as the various and sundry slang definitions do not conjure up complimentary innuendos, it is not in this Court's opinion a defamatory statement in and of itself." (*Ibid.*) The court additionally found that even if the word was defamatory, the charge was true as the plaintiff's "role in history is that of a testimonial con man." (*Ibid.*)

We agree with the district court's conclusion that the word "grifter" can be subject to various interpretations. And we have no quarrel with the *Russo* court's conclusion that in the context of the magazine article, the word did not necessarily have a defamatory meaning. But we are presented here with different facts and a different factual and procedural context.

The issue here is whether the accusation that Meyers is a "grifter" could have been construed by a reasonable reader of the Sailing Anarchy Web site to suggest a provably true fact. Viewing the "multi-millionaire grifter" remark in context, a reader of the article on the Web site could reasonably find that the author was attempting to communicate a true statement, i.e., that Meyers gained his wealth illicitly and/or that he is a scam artist who has engaged in fraud or trickery to obtain money or goods. Although most of the caption reflects creative expressions of contempt and ridicule regarding Meyers's weight,

other portions of the article refer to the more serious matter of Meyers's wealth and could be reasonably interpreted as accusing Meyers of engaging in fraud or trickery to obtain this wealth. On the record before us, Meyers presented a sufficient prima facie case to show that the phrase could be construed in a defamatory manner. Once we have made that determination, "it become[s] a question for the trier of fact whether or not it was so understood." (*Summit Bank, supra*, 206 Cal.App.4th at p. 696.)²

The court did not err in finding Meyers had a probability of prevailing on his claim within the meaning of section 425.16.

² At oral argument, defense counsel argued that this case is factually similar to *Summit Bank*, in which the court found alleged defamatory statements posted on the Internet were nonactionable statements of opinion. (*Summit Bank, supra*, 206 Cal.App.4th at p. 700.) However, in that case the court emphasized that the alleged defamatory statements appeared in a section of the Craigslist Web site entitled " 'Rants and Raves' " (*id.* at p. 696), a type of online message board in which "readers expect to see strongly worded opinions rather than objective facts" (*id.* at p. 697). Here, the alleged defamatory material was on the Web site's home page, rather than on a message board, and there are factual issues as to whether readers would expect this front section of the Web site to contain opinions rather than objective facts.

DISPOSITION

Order affirmed. Appellants to pay respondent's costs on appeal.

HALLER, J.

WE CONCUR:

McCONNELL, P. J.

HUFFMAN, J.