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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

TONYA PINKINS,

Plaintiff and Appellant,

v.

MERIDITH STEMPSKI et al.

Defendants and Respondents.

E053447

(Super.Ct.No. RIC10023978)

OPINION

APPEAL from the Superior Court of Riverside County. Gloria Trask, Judge; John Vineyard, Temporary Judge (pursuant to Cal. Const., art VI, § 21).¹ Reversed.

Tonya Pinkins, in pro. per., for Plaintiff and Appellant.

Mugg & Harper and Leigh O. Harper; Edward V. Halsell for Defendant and Respondent Meredith Stempinski.

¹ Commissioner Vineyard granted defendants' special motion to strike under Code of Civil Procedure section 425.16. Judge Trask granted defendants' motion for attorney fees.

Orrock, Popka, Fortino & Brislin and Micheal A. Fortino, for Defendants and Respondents Pam Stearns, Virginia Pharris, Christina Amezola, Debbie Gunter, Emily Bares, Lisa Beauregard, Ana Grimes, and Centennial High School Theatre Boosters.

I. INTRODUCTION

Plaintiff Tonya Pinkins appeals from orders granting the special motion to strike of defendants Meridith Stempinski, Pam Stearns, Virginia Pharris, Christina Amezola, Debbie Gunter, Emily Bares, Lisa Beauregard, Ana Grimes, and Centennial High School Theatre Boosters, and awarding defendants attorney fees. We agree with Pinkins's contention that the trial court erred in holding that her lawsuit arose from events at an official proceeding and statements made in connection with an issue of public interest. We therefore reverse the orders appealed from. Pinkins's other contentions of error are moot.

II. FACTS AND PROCEDURAL BACKGROUND

Pinkins filed a complaint against defendants on December 13, 2010, alleging causes of action for conspiracy to defame, libel per se, slander per se, intentional infliction of emotional distress, negligent infliction of emotional distress, false light invasion of privacy, and civil rights violations. On January 11, 2011, defendants filed a special motion to strike under Code of Civil Procedure² section 425.16 (the anti-SLAPP³

² All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

³ "SLAPP is an acronym for 'strategic lawsuit against public participation.'" (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 732, fn. 1.)

motion). The background facts are taken from the complaint and from declarations and exhibits the parties filed in support of and opposition to the anti-SLAPP motion.

Defendant Centennial High School Theatre Boosters (Booster Club) was organized in 2008 to support the Centennial High School Theatre Arts Department. Centennial High School is a public school within the Corona-Norco Unified School District. Stempinski was the head of the theater department at Centennial High School and the faculty advisor to the Booster Club. Stearns was the vice-president of ways and means of the Booster Club; Pharris was the treasurer, Amezola was the secretary, and Bares was the vice-president of publicity. The other defendants attended the Booster Club meeting at which the events underlying Pinkins's complaint occurred.

Pinkins was elected president of the Booster Club in October 2010. The following month, the Booster Club agreed to produce and sell a compact disc (CD) of Christmas songs performed by students to raise funds. Pinkins obtained permission for the CD production and sale from the school's vice-president and from the assistant superintendent of the school district, and the board members of the Booster Club approved establishing a PayPal account to collect money from the CD sales and future fundraising events. Pinkins and her husband, Eric Winter, using their own funds, worked with the students to record the CD.

Winter obtained approval from the president of the high school football booster club to sell CDs at a football game on November 19, 2010. That evening, Pinkins and four other CD committee members set up a booth to sell the CD. Questions were raised

as to whether Pinkins had violated the Booster club by-laws by failing to get board approval to sell the CD at the football game.

On November 22, 2010, Stempinski called a meeting of the Booster Club. Her email stated that the agenda for the meeting was to discuss communication issues, protocol, rules, and “what I feel needs to improve to help MY DEPARTMENT.” (Capitalization and underline in original.) Stempinski was not a board member of the booster club, and under the club’s bylaws, only the president was authorized to call a special meeting. Pinkins challenged the closed nature of the invitation.

Defendants met at a Sizzler restaurant on November 29, 2010. Pinkins did not attend, but her husband did attend and recorded the meeting. At the meeting, statements were allegedly made that Pinkins had mishandled funds and that she had defamed the character of another board member. A motion was made to remove Pinkins as president of the Booster Club. The meeting went into closed session, and the board voted to remove Pinkins as president.

Following the meeting, Stempinski sent Pinkins an email stating, “I am sorry that you were not able to attend tonight’s meeting. I do appreciate your husband being in attendance. I hope that he shared with you the information that was conveyed. He did leave before I requested that all of the information shared at the meeting stayed at the meeting. I would like to make that request to you and he [*sic*].” The minutes of the meeting were sent by mail to Pinkins and others. The minutes state: “Ms. Stempinski called meeting to order. Stated that meeting was called to discuss issues that have been brought to her attention that were against by-laws. Only board members and committee

chairpersons were asked to attend to discuss these issues.” On December 13, 2010, the minutes were again published for distribution to members of the Booster Club who had not been invited to attend the November 29 meeting. Stempinski disbanded the group on December 15, 2010.

Following additional briefing and a hearing, the trial court granted the anti-SLAPP motion. The trial court found that “the statements were made during an official proceeding authorized by law as to the Board Members in meetings of a 501(c)(3) corporation” The court also found “the meeting of November 29, 2010 was authorized by State law and therefore, was an official proceeding,” and that the meeting “was in a public place, open to the public and involved an important public interest.” The trial court further found that Pinkins had failed to establish a probability of success on the merits of her claims.

Defendants filed motions requesting attorney fees and costs. The trial court ruled that the claimed attorney fees were reasonable and granted the requests.

III. DISCUSSION

A. Overview of Section 425.16

The anti-SLAPP statute, section 425.16, authorizes a defendant to file a special motion to strike any cause of action arising from an act in furtherance of the defendant’s constitutional rights of free speech or petition for redress of grievances. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 311-312 (*Flatley*)). The purpose of the statute is to prevent the chilling of the valid exercise of these rights through “abuse of the judicial

process” and, to this end, is to “be construed broadly.” (§ 425.16, subd. (a); *Flatley*, *supra*, at pp. 312-313.)

The anti-SLAPP statute establishes a two-step procedure under which the trial court evaluates the merits of a plaintiff’s cause of action at an early stage of the litigation. (*Flatley*, *supra*, 39 Cal.4th at p. 312.) First, the defendant must show that the cause of action arose from protected activity, i.e., activity in furtherance of the defendant’s constitutional right of petition or free speech. (§ 425.16, subd. (b)(1); *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67 (*Equilon*).) 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 categories described in section 425.16, subdivision (e). (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) An act in furtherance of a person’s right of petition or free speech 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.” (§ 425.16, subd. (c).) Second, if the trial court determines that the defendant has met its initial burden, the burden shifts to the plaintiff to demonstrate a

reasonable probability of prevailing on the merits of its cause of action. (§ 425.16, subd. (b)(1); *Equilon, supra*, at p. 67.)

We independently review orders granting or denying a motion to strike under section 425.16. (*Flatley, supra*, 39 Cal.4th at p. 325.)

B. Official Proceeding Authorized by Law

The trial court ruled that defendants' actions occurred at an official proceeding authorized by law under section 425.16, subdivision (e)(1) and (2).

Pinkins contends the trial court erred because the Booster Club meeting at which the challenged actions took place did not qualify as an official proceeding authorized by law within the meaning of the anti-SLAPP statute. The trial court primarily relied on *Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192, 198 (*Kibler*), in which our Supreme Court held that a hospital's peer review qualified as an "official proceeding authorized by law" under section 425.16, subdivision (e)(2). The *Kibler* court explained that the peer review "procedure is required under Business and Professions Code section 805 et seq., governing hospital peer review proceedings." (*Kibler, supra*, at p. 199.) Moreover, "[a] hospital's decisions resulting from peer review proceedings are subject to judicial review by administrative mandate," and as such, the proceedings have "a status comparable to that of quasi-judicial public agencies" (*Id.* at p. 200.) The court further explained that the Legislature has given hospitals, through their peer review committees, "the primary responsibility for monitoring the professional conduct of physicians licensed in California," and "these peer review committees oversee 'matters of

public significance,’ as described in” section 426.16, subdivision (a). (*Kibler, supra*, at p. 201.)

Kibler does not support the determination that the Booster Club meeting was an official proceeding authorized by law. First, unlike the hospital peer review procedure at issue in *Kibler*, no statute requires a public high school booster club meeting. Second, unlike in *Kibler*, the booster club’s decisions are not subject to judicial review by administrative mandate. Finally, unlike in *Kibler*, the booster club does not have a status comparable to a quasi-judicial public agency.

Other cases in which courts have found “official proceedings authorized by law” are similarly distinguishable on their facts. (E.g. *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1009 [complaint filed with the Securities and Exchange Commission alleging improper business practices] [Fourth Dist. Div. Two]; *Dixon v. Superior Court* (1994) 30 Cal.App.4th 733, 744 [statements made during public review period under California Environmental Quality Act]; *Mallard v. Progressive Choice Ins. Co.* (2010) 188 Cal.App.4th 531, 538 [subpoenaing mental health records during statutorily mandated contractual arbitration of uninsured motorist claim].) The Booster Club meeting bears no similarity to such proceedings. We conclude that the trial court erred in holding the booster club meeting was an official proceeding authorized by law.

C. Public Issue or Public Forum

The trial court further ruled that defendants’ actions occurred in a public forum and concerned an issue of public interest. In *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, our Supreme Court held that a defendant bringing

an anti-SLAPP motion to strike a cause of action arising from a statement or writing made before a legally authorized proceeding or in connection with an issue under consideration by a legally authorized official proceeding (§ 425.16, subd. (e)(1) & (2)) need not separately show that the statement or writing concerned an issue of public significance. (*Briggs v. Eden Council for Hope & Opportunity*, *supra*, at pp. 1113-1123.) However, to succeed on an anti-SLAPP motion under section 425.16, subdivision (e)(3), the defendant must show that the challenged statement or writing was “made in a place open to the public or a public forum in connection with an issue of public interest.” (§ 425.16, subd. (e)(3).)

“A public forum is a place open to the use of the general public “for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” [Citations.]” (*Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1130 (*Weinberg*)). Thus, for example, courts have held that internet news groups accessible to the public are public forums within the meaning of section 425.16. (*Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 41 fn. 4; accord *ComputerXpress, Inc. v. Jackson*, *supra*, 93 Cal.App.4th at pp. 1006-1007.) In *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, the court held that meetings of homeowners association boards of directors were public forums when the board meetings were televised and open to all interested parties, and the meetings served a function similar to that of a governmental body. (*Id.* at p. 476.) In contrast, a forum to which access is selective is not a public forum within the meaning of the anti-SLAPP statute. (See, e.g., *Weinberg*, *supra*, at pp. 1130-1131 [the monthly newsletter of an association of token collectors was not a public forum]; *Kurwa v.*

Harrington, Foxx, Dubrow & Canter, LLP (2007) 146 Cal.App.4th 841, 846 [a business letter to the president of an HMO from the attorney for a shareholder of a corporation providing services to HMO members did not meet the definition of a public forum].)

In *Cabrera v. Alam* (2011) 197 Cal.App.4th 1077, the court held that a homeowners association meeting was a public forum, and a board member's statements that a past president had stolen money concerned an issue of public interest. The court explained: "A "public forum" is traditionally defined as a place that is open to the public where information is freely exchanged." [Citation.] Homeowners association board meetings constitute a public forum within the meaning of the anti-SLAPP statute because they 'serve [] a function similar to that of a governmental body. As our Supreme Court has recognized, owners of planned development units "'comprise a little democratic subsociety'" [Citations.] In exchange for the benefits of common ownership, the residents elect a[] legislative/executive board and delegate powers to this board. This delegation concerns not only activities conducted in the common areas, but also extends to life within "'the confines of the home itself.'" [Citations.] A homeowners association board is in effect "a quasi-government entity paralleling in almost every case the powers, duties, and responsibilities of a municipal government." [Citation.]' [Citation.] [¶] Furthermore, '[b]ecause of a homeowners association board's broad powers and the number of individuals potentially affected by a board's actions, the Legislature has mandated that boards hold open meetings and allow the members to speak publicly at the meetings. [Citations.] These provisions parallel California's open meeting laws regulating government officials, agencies and boards. [Citation.] Both

statutory schemes mandate open governance meetings, with notice, agenda and minutes requirements, and strictly limit closed executive sessions. [Citation.]’ [Citation.]”
(*Cabrera v. Alam, supra*, at p. 1087.)

Defendants argue that because the meeting was held in a restaurant, it was held in a public place. However, the meeting called by Stempinski was by invitation only; it was not open to all the members of the Booster Club, but only to board members and committee chairpersons. After the meeting was over, Stempinski requested privacy about the meeting. Even if we assume for purposes of argument that the meeting took place in a public forum, the defendants must also show under section 425.16, subdivision (e)(3) that the challenged actions or statements concerned an issue of public interest.

“The statute does not provide a definition for ‘an issue of public interest,’ and it is doubtful an all-encompassing definition could be provided. However, the statute requires that there be some attributes of the issue which make it one of public, rather than merely private, interest. A few guiding principles may be derived from decisional authorities. First, ‘public interest’ does not equate with mere curiosity. [Citations.] Second, a matter of public interest should be something of concern to a substantial number of people. [Citations.] Thus, a matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest. [Citations.] Third, there should be some degree of closeness between the challenged statements and the asserted public interest [citation]; the assertion of a broad and amorphous public interest is not sufficient [citation]. Fourth, the focus of the speaker’s conduct should be the public interest rather than a mere effort ‘to gather ammunition for another round of [private] controversy’

[Citation.] Finally, ‘those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure.’ [Citation.] A person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people. [Citations.]” (*Weinberg, supra*, 110 Cal.App.4th at pp. 1132-1133.) The *Weinberg* court listed a number of examples of matters of public interest, including statements about a lawsuit against a church that had received broad media coverage (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 651, disapproved on another ground in *Equilon, supra*, 29 Cal.4th at p. 68; statements about the located of a battered women’s shelter that had generated public controversy and had been the subject of local land use hearings (*Averill v. Superior Court* (1996) 42 Cal.App.4th 1170, 1175); allegations of domestic violence against a political consultant who had raised the issue of domestic violence in political campaigns (*Sipple v. Foundation for Nat. Progress* (1999) 71 Cal.App.4th 226, 238-239); statements about self-government for 3,000 residents of a gated community (*Damon v. Ocean Hills Journalism Club, supra*, 85 Cal.App.4th at p. 479), and statements about a participant in a nationally broadcast television show (*Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 807-808).

The *Weinberg* court contrasted the above-listed cases with *Rivero v. American Federation of State, County and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913 (*Rivero*) in which the former supervisor of a group of eight janitors on a university campus was demoted and then fired following an investigation of allegations of misconduct that were found to be unsubstantiated. Thereafter, the employees union

published and distributed three documents containing claims of misconduct by Rivero. (*Id.* at pp. 916-917.) The Court of Appeal concluded that the publications did not involve a matter of public interest. The court reasoned, “Here, the Union’s statements concerned the supervision of a staff of eight custodians by Rivero, an individual who had previously received no public attention or media coverage. Moreover, the only individuals directly involved in and affected by the situation were Rivero and the eight custodians. Rivero's supervision of those eight individuals is hardly a matter of public interest.” (*Id.* at p. 924.) The court also rejected the claim that the defendant could turn a private matter into one of public interest simply by publishing it to numerous people. “If the mere publication of information in a union newsletter distributed to its numerous members were sufficient to make that information a matter of public interest, the public-issue limitation would be substantially eroded, thus seriously undercutting the obvious goal of the Legislature that the public-issue requirement have a limiting effect.” (*Id.* at p. 926.)

The court in *Weinberg* agreed with the decision in *Rivero* and found it persuasive because the defendant in *Weinberg* had “failed to demonstrate that his dispute with plaintiff was anything other than a private dispute between private parties. The fact that defendant allegedly was able to vilify plaintiff in the eyes of at least some people establishes only that he was at least partially successful in his campaign of vilification; it does not establish that he was acting on a matter of public interest.” (*Weinberg, supra*, 110 Cal.App.4th at pp. 1133-1134.)

In *Cross v. Cooper* (2011) 197 Cal.App.4th 357, the court construed the term “public interest” “to include not only governmental matters, but also private conduct that

impacts a broad segment of society and/or that affects a community in a manner similar to that of a government entity. [Citations.]’ [Citations.]” (*Id.* at p. 372.) However, courts have held that issues that involve only a small group of people do not meet the definition of public interest under section 425.16, subdivision (e)(3). (See, e.g., *Olaes v. Nationwide Mutual Ins. Co.* (2006) 135 Cal.App.4th 1501, 1508-1511 [private employer’s sexual harassment procedure was not a quasi-governmental proceeding and, although elimination of sexual harassment implicates a public interest, a private employer’s investigation of a small group of people did not rise to a public interest under section 425.16].)

Here, defendants define the issue as follows: “The purpose of the meeting on November 29, 2010 was to consider the proper functioning of the Booster Club and whether plaintiff failed to follow Booster Club bylaws in connection with the raising of funds to support a department of a public high school.” Thus, the challenged conduct involved only a small group of people, and it did not affect a community in a manner similar to that of a governmental entity. (*Cross v. Cooper, supra*, 197 Cal.App.4th at p. 372.) Under case law interpreting “public interest” within the meaning of section 425.16, subdivision (e)(3), extending protection of the anti-SLAPP statute to such an issue would be unwarranted, and we decline to do so. We conclude the trial court erred in granting defendants’ anti-SLAPP motion. Pinkins’s additional arguments that the Booster Club was engaged in illegal activities and that defendants’ language was unprotected commercial speech are moot.

D. Attorney Fees

Because we reverse the trial court's order granting the anti-SLAPP motion, the award of attorney fees must also be reversed.

IV. DISPOSITION

The judgment is reversed. Costs are awarded to plaintiff and appellant.

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HOLLENHORST

J.

We concur:

RAMIREZ

P.J.

CODRINGTON

J.