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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MARLENE GARIBAY et al.,

Plaintiffs and Respondents,

v.

US LAW CENTER et al.,

Defendants and Appellants.

E063328

(Super.Ct.No. RIC1409799)

OPINION

APPEAL from the Superior Court of Riverside County. John W. Vineyard, Judge.

Affirmed.

William Rounds and Marcella Lucente for Defendants and Appellants.

Law Offices of Joel W. Baruch, Corey A. Hall, Joel W. Baruch, and

Christopher L. Gaspard for Plaintiffs and Respondents.

Plaintiffs and respondents Marlene Garibay (Garibay) and Karina Hernandez (Hernandez) sued defendants and appellants US Law Center, Law Office of Sanjay Sobti, APC (Law Office), and Sanjay Sobti (Sobti) for wrongful termination, discrimination, and infliction of emotional distress. Defendants filed a special motion to strike the

complaint as a strategic lawsuit against public participation (SLAPP) pursuant to the Code of Civil Procedure¹ section 425.16 (known as the anti-SLAPP statute). The trial court denied their motion, and we affirm.

I. PROCEDURAL BACKGROUND AND FACTS

US Law Center is a law firm that specializes in immigration law and operates in Orange, California. Law Office is a professional corporation with an office in Corona, California. Sobti is the founding partner of US Law Center and Law Office, and is an attorney licensed to practice law in California. Hernandez began working for defendants in September 2012 as a paralegal in their Corona office. Garibay began working for defendants in February 2013 as a file clerk/legal assistant in their Corona office.

Ofelia Phibbs also worked for defendants as a paralegal. On or about April 30, 2013, both Hernandez and Phibbs informed their supervisor that they were pregnant. Less than two weeks later, Phibbs was demoted. Although she continued to work for defendants, Phibbs filed an administrative complaint with the California Department of Fair Employment and Housing (DFEH) for being demoted on the basis of pregnancy. After filing her lawsuit, defendants terminated Phibbs on October 1, 2013, and Hernandez was told to sign a declaration that Phibbs had only filed her lawsuit to preserve her job and not because defendants practiced discrimination against pregnant employees. Hernandez refused to sign it.

¹ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

Hernandez continued to work for defendants until December 13, 2013, when she went on maternity leave. She returned to work on February 19, 2014; however, on March 14, 2014, after receiving a modified schedule, Hernandez was terminated for arriving to work eight minutes late. Prior to her termination, she did not have any write-ups and had won the “employee of the month” award in October 2013. Hernandez filed an administrative complaint with the DFEH and received a “Right to Sue” letter.

As part of her job, Garibay was required to call families of detained individuals who were linked to Mexican drug cartels to ask for additional payments for the firm, despite her feeling uncomfortable about doing so. Shortly after her request to work on other assignments was refused, she was warned for “ostensibly arriving to work late.” On or about September 12, 2013, Garibay notified her supervisor that she was pregnant. Thereafter, defendants’ management began to closely scrutinize her and her work activities. She complained that such scrutiny was stressful for her. Within two weeks of disclosing her pregnancy, Garibay was written up for being late on one occasion. On November 6, 2013, Garibay was terminated from her employment, allegedly for making a minor mistake in her work. On October 5, 2014, Garibay filed an administrative complaint with the DFEH and received a “Right to Sue” letter.

On October 15, 2014, Garibay and Hernandez initiated this action against defendants, asserting gender discrimination, discrimination based on pregnancy and pregnancy-related disability, failure to prevent harassment, discrimination and/or retaliation, wrongful termination for engaging in protected activity, and intentional infliction of emotional distress. On January 6, 2015, defendants moved to strike the

complaint as violating the anti-SLAPP statute. (§ 425.16.) On February 26, 2015, the trial court denied the anti-SLAPP motion. Defendants appeal.

II. DISCUSSION

Defendants claim their special motion to strike the entire complaint was erroneously denied because the complaint “is directed at US Law Center’s litigation activities and seeks to chill US Law Center’s exercise of a constitutionally protected activity: the right to petition for redress on behalf of US Law Center and on behalf of US Law Center’s clients.” We disagree.

A. Section 425.16

A SLAPP suit seeks to chill or punish the exercise of the constitutional rights to freedom of speech or to petition the government for redress of grievances. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055.) In enacting section 425.16, the Legislature created a remedy known as a special motion to strike as a procedural means of disposing of SLAPP suits at the earliest possible stage of the litigation. (*Gerbosi v. Gaims, Weil, West & Epstein, LLP* (2011) 193 Cal.App.4th 435, 443.)

Section 425.16 prescribes a two-step process for striking a cause of action. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) The court first determines whether the defendant has demonstrated that the allegations of the challenged cause of action or complaint arise from protected activity. (§ 425.16, subd. (b)(1).)² The

² Section 425.16, subdivision (b)(1) states: “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

defendant meets this burden by showing that the act underlying the challenged cause of action fits one or more of the categories spelled out in subdivision (e) of section 425.16.³ (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88 (*Navellier*)). In making this determination, the court considers “the pleadings, and supporting and opposing affidavits stating the facts upon which the liability . . . is based.” (§ 425.16, subd. (b)(2).)

If the court finds the defendant has made this initial showing, it proceeds to the second step of the anti-SLAPP analysis and determines whether the plaintiff has demonstrated a probability of prevailing on its claims. (*Navellier, supra*, 29 Cal.4th at p. 88.) If, however, the defendant does not meet its burden on the first step, the court must deny the motion and need not address the second step. (*Ibid.*; see *City of Riverside v. Stansbury* (2007) 155 Cal.App.4th 1582, 1594.) “Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning *and* lacks even minimal merit—is a SLAPP, subject to being stricken under the statute.” (*Navellier, supra*, at p. 89.)

determines that the plaintiff has established that there is a probability that the plaintiff with prevail on the claim.”

³ Section 425.16, subdivision (e) provides that, as used in the statute, the phrase, “‘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.”

B. Standard of Review

We review the denial of a special motion to strike de novo, engaging in the same two-step analysis as the trial court. We first determine whether the defendant met its initial burden of demonstrating that the challenged cause or causes of action constitutes a SLAPP, and if so, we then determine whether the plaintiff met its evidentiary burden of demonstrating a probability of prevailing on its claims. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325.)

C. Analysis

Defendants' claim their conduct fits under the first, second, and fourth categories contained in section 425.16, subdivisions (e)(1), (2), and (4).⁴

“In assessing whether a cause of action arises from protected activity, “we disregard the labeling of the claim [citation] and instead ‘examine the *principal thrust* or *gravamen* of a plaintiff’s cause of action . . .’ We assess the principal thrust by identifying ‘[t]he allegedly wrongful and injury-producing conduct . . . that provides the foundation for the claim.’ [Citation.] If the core injury-producing conduct upon which the plaintiff’s claim is premised does not rest on protected speech or petitioning activity, collateral or incidental allusions to protected activity will not trigger application of the anti-SLAPP statute. [Citation.]” [Citation.]’ [Citation.] ‘[T]he critical point is whether the plaintiff’s cause of action itself was based on an act in furtherance of the defendant’s

⁴ Defendants argued the complaint arose out of their conduct of providing legal advice to clients in their immigration matters, seeking to prevent defendants from representing their clients who sought asylum, and furthermore sought retaliation against defendants for asking Hernandez to sign a document relating to litigation against them.

right of petition or free speech.’ [Citation.]” (*Hunter v. CBS Broadcasting Inc.* (2013) 221 Cal.App.4th 1510, 1520.)

The alleged injury-producing conduct underlying plaintiffs’ gender/pregnancy discrimination claims is defendants’ treatment of each plaintiff shortly after each announced her pregnancy. The complaint asserts that after plaintiffs announced their pregnancies, one was closely scrutinized and followed and then terminated for making a minor mistake in her work, while the other was terminated for being late on the first day of her modified work schedule. Additionally, plaintiffs submitted their declarations, along with one from another former employee, Ofelia Phibbs, who also has a lawsuit pending against defendants for pregnancy/gender discrimination under the FEHA. Each declaration notes that the employees performed satisfactorily, but were reprimanded, scrutinized closely and/or terminated shortly after disclosing the pregnancy and/or taking maternity leave. No declaration indicates any act that was taken in furtherance of defendants’ constitutional rights of petition or free speech in connection with a public issue.

Defendants state that plaintiffs’ claims are related to the defendants’ representation of certain clients, and thus fall within the scope of the anti-SLAPP statute. Not so. At most, defendants can show allegations relating to both protected and unprotected conduct, not that the gravamen of the complaint is protected conduct. Causes of action that allege both protected and unprotected conduct are subject to the anti-SLAPP statute ““unless the protected conduct is “merely incidental” to the unprotected conduct.”” (*Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133

Cal.App.4th 658, 672.) Here, the gravamen of plaintiffs' action is gender/pregnancy discrimination based on defendants' termination of their employment shortly after announcing their pregnancies. Assuming that Garibay's claim that she was asked to deal with drug cartel members and Hernandez's claim that she was ordered to sign a false declaration involved protected acts, they are merely incidental.

As defendants have failed to make a prima facie showing that the conduct underlying plaintiffs' complaint arises from protected acts of petitioning or speech, the anti-SLAPP statute does not apply.

III. DISPOSITION

The order is affirmed. Plaintiffs shall recover their costs on appeal.

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HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

SLOUGH

J.