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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

EUGENE A. HOOSER,

Plaintiff and Appellant,

v.

ZAMAN M. KABIR,

Defendant and Respondent.

G048335

(Super. Ct. No. 30-2012-00581483)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Franz E. Miller, Judge. Affirmed.

Eugene A. Hooser, in pro. per., for Plaintiff and Appellant.

Zaman M. Kabir, in pro. per., for Defendant and Respondent.

* * *

The trial court declined to enter a default judgment in favor of plaintiff and

appellant Eugene A. Hooser in his defamation action against defendant and respondent Zaman M. Kabir. The court held that Kabir's oral and written statements made in a prior lawsuit were protected by the litigation privilege of Civil Code section 47. We agree and affirm.

I

FACTS

A. Statements Made in Prior Litigation:

A reporter's transcript in *Behnaz Sheila Shahbazi v. Zaman Kabir et al.* (Orange County Super. Ct. Case No. 30-2011-00515493) shows Kabir appeared in propria persona at a March 23, 2012 hearing pertaining to a motion to compel his wife, Nahid, to attend a deposition. The court asked Kabir why his wife resisted attendance. Kabir explained that his wife was undergoing cancer treatment and that the opposing attorney had been very offensive to her in two or three prior depositions. He further stated that the opposing attorney "always has another gentleman" with him, "a disbarred attorney." Kabir said: "His name is Mr. Hauser [*sic*], and he was arrested twice, in 2000 and 2006." He further stated the arrests were "for kidnapping and everything, and my wife is really scared about the situation and the way he is"

In addition to the oral statements, Kabir and his wife, in propria persona, filed a response to the motion to compel her attendance at deposition. They said that she was a cancer patient and that stressful activity was hazardous to her health. They further said that her deposition had already been taken several times and that the opposing attorney, Attorney Majid Foroozandeh, had made "offensive personal comments" to her, causing her "extreme emotional distress." In addition, the Kabirs stated: ". . . Mr. Foroozandeh wields the services of Mr. Eugene Hooser who is a disbarred attorney who has lost his state bar [license] due to commission of numerous criminal acts to include theft and kidnapping between the years of 2000 and 2006 and for which he has been

incarcerated in state prison numerous times [citation]. Mr. Hooser is working at Mr. Foroozandeh's office and has always been present during Mrs Kabir's depositions[.] Having found out about Mr. Hooser's criminal background, Mrs. Kabir dreads to appear for any deposition involving Mr. Foroozandeh and Mr. Hooser."

B. Defamation Action:

Hooser, in propria persona, filed a defamation action against Kabir. The complaint alleged that Kabir had gone into open court and falsely stated that Hooser was a disbarred attorney who had been arrested for kidnapping. It further alleged that Kabir had filed, in the prior lawsuit, written declarations in which he made the same false statements. In addition, the complaint alleged that Hooser had resigned from the State Bar in 2001, but had never been disbarred, and that he had never been arrested for kidnapping.

In a declaration filed in support of his request for a default judgment in the defamation action, Hooser stated: "I am the Litigation Manager for the Law Office of Foroozandeh, APC. I practiced law from 1979 to August 2001 when I resigned with allegations pending. . . . My primary duties are to oversee the daily office operations, legal research, prepare briefs for attorney Foroozandeh, and prepare him for depositions and court appearances. Most recently I co-chaired with Mr. Foroozandeh in . . . the bench trial of *Kabir v. Shabazi*" Hooser also declared: "Briefly, [I have] appeared in various courtrooms throughout the Superior Court of Orange County with attorney Foroozandeh. I also interact with attorneys on a daily basis; attend depositions with Mr. Foroozandeh, arbitrations mediations and settlement conferences."

Hooser admitted to having been arrested in or around 2001 for what he

described as “white-collar crimes” and to having served 11 days in custody. He also admitted that, in or around 2006, he entered into a plea bargain to serve “16 months in prison at half time for receiving stolen property” and was released from prison in 2007. However, he emphasized that he had never been arrested for kidnapping and had never been disbarred.

Hooser filed a request for entry of default and a request for a default judgment (Code Civ. Proc., § 585). The court held that Kabir’s statements were protected by the Civil Code section 47, subdivision (b) litigation privilege and ordered that judgment be entered in his favor. Hooser appeals.

II

DISCUSSION

“The litigation privilege, codified at Civil Code section 47, subdivision (b), provides that a ‘publication or broadcast’ made as part of a ‘judicial proceeding’ is privileged. This privilege is absolute in nature, applying ‘to *all* publications, irrespective of their maliciousness.’ (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 216 [266 Cal.Rptr. 638, 786 P.2d 365] (*Silberg*)). ‘The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that [has] some connection or logical relation to the action.’ (*Id.* at p. 212.)” (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1241.)

Hooser says that inasmuch as *he himself* was neither a litigant nor another “participant[] authorized by law,” the four-prong test of *Silberg v. Anderson, supra*, 50 Cal.3d 205 was not met and the litigation privilege did not apply to Kabir’s statements. However, the second prong of the *Silberg* test states that the communication must be made “by litigants or other participants authorized by law.” (*Id.* at p. 212, italics added.) It does not state that the statements must be made *about* “litigants or other participants

authorized by law.”

To get around that awkward wording issue, Hooser quotes a prior formulation of the four-prong test, contained in *Bradley v. Hartford Acc. & Indem. Co.* (1973) 30 Cal.App.3d 818, a case disapproved in part in *Silberg v. Anderson, supra*, 50 Cal.3d 205 at page 219. The *Bradley* iteration of the test stated that “absolute privilege in judicial proceedings is afforded only if the following conditions have been met: the publication (1) was made in a judicial proceeding; (2) had some connection or logical relation to the action; (3) was made to achieve the objects of the litigation; and (4) involved litigants or other participants authorized by law.” (*Bradley v. Hartford Acc. & Indem. Co., supra*, 30 Cal.App.3d at p. 825.)

Hooser favors this outdated version of the test because of the wording of its fourth prong. He reiterates his position that Kabir’s statements did not satisfy the fourth prong of the test, because they did not *involve* “litigants or other participants authorized by law” (*Bradley v. Hartford Acc. & Indem. Co., supra*, 30 Cal.App.3d at p. 825) inasmuch as Hooser was neither a party to the underlying lawsuit nor a participant therein.

It should be no surprise to Hooser that we apply the current version of the test, as enunciated by the Supreme Court in *Silberg v. Anderson, supra*, 50 Cal.3d 205, and reaffirmed by the Supreme Court in *Action Apartment Assn., Inc. v. City of Santa Monica, supra*, 41 Cal.4th at page 1241. Furthermore, we observe that the Supreme Court in *Action Apartment Assn., Inc.* stated: “An exception to the litigation privilege for all suits brought by parties who were not involved in the underlying litigation would be antithetical to the privilege’s purposes. . . . Derivative litigation brought by parties who did not participate in the underlying litigation, like litigation brought by parties who did participate, would pose an external threat of liability that would deter potential litigants,

witnesses, and others from participating in judicial proceedings.”¹ (*Id.* at pp. 1247-1248.)

We turn now to the application of the *Silberg* test to the matter before us. As the trial court observed, and as is undeniably the case, the statements were made by a litigant, Kabir. And, as Hooser himself asserts, they were made in a judicial proceeding—the prior lawsuit. Moreover, as the trial court found, and as we shall show, the statements also were made “to achieve the objects of the litigation,” and had “some connection or logical relation to the action.” (*Silberg v. Anderson, supra*, 50 Cal.3d at p. 212.) These last two requirements of the *Silberg* test “overlap to a considerable degree and we therefore discuss them together.” (*Olsen v. Harbison* (2010) 191 Cal.App.4th 325, 335-336.)

In the underlying lawsuit, Kabir appeared in opposition to a motion to compel the deposition of his wife. In arguing that his wife ought not have to be deposed again, he argued she was a fragile cancer patient who had been subjected to offensive and upsetting comments by the opposing attorney in prior depositions and who was afraid of Hooser, who always came along with that attorney. In describing why his wife would be upset by the attendance of Hooser, Kabir said Hooser was a disbarred attorney who twice had been arrested “for kidnapping and everything.” Kabir made similar statements in his written opposition to the motion to compel.

¹ In any event, just because Hooser says his name did not appear on any pleadings and he was not in the courtroom when Kabir made the statements in question, this does not mean he has shown that he had no involvement in the prior litigation. Rather, Hooser admits that he prepares Attorney Foroozandeh for depositions, attends depositions with him, and co-chaired a litigation matter he identified as “*Kabir v. Shabazi*.” Hooser even stated in his February 7, 2013 supplemental declaration in the defamation action that Kabir had filed a motion to keep him out of the courtroom in prior litigation. Anyway, “[t]he privilege is . . . broadly applied and doubts are resolved in its favor. [Citation.]” (*Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 283.)

Inasmuch as the statements were made with the objective of defeating a motion to compel his wife’s attendance at a deposition, they were made “to achieve the objects of the litigation.” (*Silberg v. Anderson, supra*, 50 Cal.3d at p. 212.) Furthermore, “[a]s the California Supreme Court [has] observed, a communication in furtherance of the objects of the litigation is ‘simply part of’ the requirement that the communications be connected with, or logically related to, the litigation. [Citations.]” (*Olsen v. Harbison, supra*, 191 Cal.App.4th at pp. 335-336; accord, *Hawran v. Hixson, supra*, 209 Cal.App.4th at pp. 282-283.) In short, statements Kabir made in opposition to the motion to compel attendance at deposition had “some connection or logical relation to the action,” within the meaning of the final prong of the *Silberg* test. All four prongs of the test were satisfied.

III

DISPOSITION

The judgment is affirmed. Kabir shall recover his costs on appeal.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.