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Superior Court of California, County of Alameda
George E. McDonald Hall of Justice

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| <p>Beagle Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> <p>Cochran Defendant/Respondent(s) (Abbreviated Title)</p> | <p>No. <u>RG15794528</u></p> <p>Order</p> <p>Motion to Strike Cross-Complaint</p> |
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The Motion to Strike Cross-Complaint was set for hearing on 07/26/2016 at 02:30 PM in Department 302 before the Honorable Delbert C. Gee. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Special Motion to Strike the First Amended Cross-Complaint of Connor Freff Cochran et al. (collectively "Cochran"), pursuant to Code of Civil Procedure § 425.16, by Cross-Defendant Kathleen Hunt, individually and dba Unique Law, is GRANTED.

In ruling on a Special Motion to Strike, the Court engages in a two-step process. (See *Equilon Enterprises v. Consumer Cause Inc.* (2002) 29 Cal.4th 53, 67.) First, the Court decides whether the moving party has made a threshold showing that the challenged cause of action is one arising from a protected activity, i.e., an act in furtherance of a person's right of free speech in connection with a public issue. (See Code of Civil Procedure § 425.16(b)(1).) Second, if such a showing is made, the Court determines whether the opposing party has demonstrated a probability of prevailing on the claim. The opposing party demonstrates this by showing the challenged pleading is legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the opposing party is credited. (*Vogel v. Felice* (2005) 127 Cal.App.4th 1006, 1117.)

Where a cause of action is based both protected and unprotected activity, that cause of action is subject to an anti-SLAPP motion unless the allegations concerning protected activity are "merely incidental" to the cause of action. (See *Peregrine Funding Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 672.)

Cochran's First Amended Cross-Complaint alleges three causes of action against Hunt: the Third Cause of Action for Interference with Contractual Advantage; the Fourth Cause of Action for Interference with Business Affairs; and the Eleventh Cause of Action for Unfair Business Practices. (Cochran had initially alleged other causes of action against Hunt, but he dismissed those causes of action without prejudice on May 13, 2016.)

Here, Hunt has satisfied the first step of the process by demonstrating that Cochran's claims arise from conduct protected by Code of Civil Procedure § 425.16(e)(2). Cochran's claims against Hunt arise from her role as an attorney representing Plaintiff and Cross-Defendant Peter Beagle, in matters pertaining to estate planning and in his business disputes with Cochran. (See First Amended Cross-Complaint, paragraphs 55-71, particularly paragraphs 63 and 65.) Each of the three causes of action asserted by Cochran against Hunt is based, in large part if not entirely, on her conduct in representing

Beagle in his business disputes with Cochran. (See First Amended Cross-Complaint, paragraphs 94(a) and (c), 98(a) and (b)(i), and 148.) Written or oral communications made in connection with judicial proceedings, including communications preparatory or in anticipation of such proceedings, are protected under § 425.16(e). (See, e.g., *Karnazes v. Ares* (2016) 244 Cal.App.4th 344, 353, as well as the cases cited on pages 6-7 of Hunt's opening brief.) The allegations concerning Hunt's protected conduct are far more than "merely incidental" to each of those causes of action.

The burden therefore shifted to Cochran to submit admissible evidence demonstrating a probability of prevailing on his claims against Hunt. Cochran fails to do so, because he has not submitted any admissible evidence demonstrating any such probability.

Cochran appears to fundamentally misunderstand his burden in opposing an anti-SLAPP motion. Cochran argues that in ruling on this Motion, the Court must accept the allegations in his (purportedly) verified First Amended Cross-Complaint as true, citing *Overstock.Com Inc. v. Gradient Analytics Inc.* (2007) 151 Cal.App.4th 688, 699-700. In fact, the *Overstock* case stands for exactly the opposite proposition, i.e., that in opposing an anti-SLAPP motion a party CANNOT rely on allegations in the pleading, but instead must set forth evidence that would be admissible at trial. (*Id.*; see also *Karnazes*, supra, 244 Cal.App.4th at 354.) Even those cases that have allowed consideration of verified pleadings only do so for "verified allegations based on personal knowledge of the pleader". (See *Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1290.) In Cochran's First Amended Cross-Complaint, virtually all of the allegations concerning Hunt do not purport to be based on Cochran's personal knowledge, but rather "on information and belief". (See First Amended Cross-Complaint, paragraphs 63, 65, and 68-71.) Those allegations have no evidentiary value. (See *Evans v. Unkow* (1995) 38 Cal.App.4th 1490, 1497.) Moreover, the Court observes that the First Amended Cross-Complaint filed with the Court purports to be verified, but no verification pages were actually attached to the First Amended Cross-Complaint filed with the Court.

In addition to his purportedly verified First Amended Cross-Complaint, Cochran submitted his own five page declaration in opposition to this Motion. However, Cochran's declaration does little more than quote certain paragraphs from his First Amended Cross-Complaint. Cochran's declaration fails to establish an adequate foundation for the truth of any of those vague and conclusory allegations or that any of them are based on his personal knowledge, and therefore they are to be disregarded. (See, e.g., *Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 26.)

But even if the Court were to consider Cochran's declaration, he fails to establish that Hunt engaged in any conduct that is not absolutely privileged under Civil Code § 47(b). Hunt's communications that had some relation to Beagle's claims against Cochran and were made in anticipation of this litigation are privileged under § 47(b) (See *Salma*, supra, 161 Cal.App.4th at 1290-1291 and *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1057.) In particular, supplying a copy of Beagle's Complaint to online news sites (which Hunt indicates, in her declaration submitted with the moving papers, is the only act of "publicity" in which she engaged) is absolutely privileged under Civil Code § 47(d)(1). Cochran submits no admissible evidence that Hunt engaged in any other act of "publicity", nor does he submit any admissible evidence demonstrating a violation of California Rules of Professional Conduct, Rule 5-120.

In addition, to prevail on his claim for Interference with Business Affairs, Cochran would have to establish conduct by Hunt that was wrongful by some legal measure other than the interference itself, i.e., that was proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard. (See *San Jose Construction Inc. v. S.B.C.C. Inc.* (2007) 155 Cal.App.4th 1528, 1545.) Here, Cochran fails to submit admissible evidence demonstrating that the conduct on which his Fourth Cause of Action is based - Hunt's engaging "in improper publicity efforts" by disseminating copies of the Complaint in this case and offering her client Beagle legal advice thereby "inducing" him to discontinue signing and personalizing items - is wrongful by any determinable legal standard. To the contrary, that conduct by Hunt is absolutely privileged under Civil Code § 47(b).

Finally, as to Cochran's Eleventh Cause of Action for Unfair Business Practices, that claim is based on the same conduct that is absolutely privileged under Civil Code §47(b), i.e., providing legal advice to Beagle and "overtly publicizing the Complaint" by providing a copy to online news sites. (See First Amended Cross-Complaint paragraph 148.) Cochran fails to submit any admissible evidence that Hunt's conduct exceeded the Civil Code § 47(b) litigation privilege. In addition, the only remedies available under Unfair Business Practices § 17200 et seq. are injunctive relief and restitution, i.e.,

returning property or money that Hunt unlawfully obtained from Cochran. (See Madrid v. Perot Systems Corp. (2005) 130 Cal.App.4th 440, 452-453.) Cochran fails to articulate any appropriate injunctive relief that should be imposed on Hunt (see First Amended Cross-Complaint, Prayer paragraph 11(a)), nor does he allege or prove that Hunt ever obtained any money or property from him that is subject to restitution.

Cochran's First Amended Cross-Complaint, as against Cross-Defendant Kathleen Hunt, individually and dba Unique Law, is STRICKEN. Cross-Defendant Kathleen Hunt, individually and dba Unique Law, is DISMISSED from this action, with prejudice.

Dated: 07/26/2016

facsimile


Judge Delbert C. Gee

SHORT TITLE:

Beagle VS Cochran

CASE NUMBER:

RG15794528

ADDITIONAL ADDRESSEES

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