



Crutcher v. Chandler Lodge Foundation

2006 | Cited 0 times | California Court of Appeal | March 22, 2006

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

Chandler Lodge Foundation appeals from the trial court's order denying its special motion to strike under Code of Civil Procedure section 425.16.¹ We affirm.

FACTS AND PROCEEDINGS BELOW

Norval Crutcher sued Chandler Lodge Foundation for defamation and intentional infliction of emotional distress, among other causes of action. The following is a summary of the allegations in Crutcher's complaint.

Crutcher alleged Chandler Lodge is "a nonprofit organization that exists to assist in the rehabilitation of alcoholics." Crutcher was a "sustaining" member of Chandler Lodge for 27 years as well as an "elected board member."² In or about August 2004, a man Crutcher knew only as "Gordon" was elected as a board member of Chandler Lodge. On multiple occasions after his election, Gordon "made several oral statements" on behalf of Chandler Lodge in which he accused Crutcher of stealing money from Chandler Lodge. According to Crutcher, Gordon said in front of other people, "'You know where the money is. You took the money.'" On November 18, 2004, Gordon again told people Crutcher had stolen money from Chandler Lodge and also said Crutcher "was incompetent in his office as a member of the board." That same day, Crutcher "was removed from the board" of Chandler Lodge. Crutcher alleged other members and employees of Chandler Lodge "have been deterred from relating with [him] as a member of [Chandler Lodge]."

The only defendant Crutcher named in his complaint is Chandler Lodge. In his first cause of action for defamation, Crutcher alleged Chandler Lodge (acting "through" Gordon) made several false statements to board members, employees and other members of Chandler Lodge in August 2004, on November 18, 2004 and thereafter, "charging [Crutcher] with a crime of being a thief and/or a defrauder." In his second and third causes of action, Crutcher contended Gordon's conduct and Chandler Lodge's ratification of that conduct constituted intentional and negligent infliction of emotional distress. In his third cause of action for negligence, Crutcher alleged as a result of the defamatory statements he was removed from his position as a member of Chandler Lodge's board of



Crutcher v. Chandler Lodge Foundation

2006 | Cited 0 times | California Court of Appeal | March 22, 2006

directors. In his fifth cause of action for negligent training/supervision, Crutcher alleged Chandler Lodge knew Gordon "was neither qualified nor able to properly investigate whether or not [Crutcher] had stolen money" and Chandler Lodge "did not adequately train and/or supervise [Gordon] in his performance of investigating" the matter.

In response to Crutcher's complaint, Chandler Lodge filed a demurrer³ and subsequently filed a special motion to strike Crutcher's complaint as a SLAPP (strategic lawsuit against public participation) suit under section 425.16, the anti-SLAPP statute. In its special motion to strike, Chandler Lodge represented all of the alleged defamatory statements were made to the board of directors of Chandler Lodge during the course of Gordon's investigation into whether Crutcher had issued checks drawn on Chandler Lodge's bank account which did not go to pay obligations of Chandler Lodge.⁴ Chandler Lodge argued statements made in connection with matters before its board of directors implicate its "constitutional right of free speech in connection with a public issue or an issue of public interest"⁵ and therefore trigger the anti-SLAPP statute.

In opposition to the special motion to strike, Crutcher argued Chandler Lodge did not and could not show the complaint was subject to the anti-SLAPP statute because the alleged defamatory statements were not made in an official proceeding authorized by law, in a public forum or in connection with a public issue or an issue of public interest.⁶ Crutcher asserted Chandler Lodge is a small, private nonprofit organization which engaged in "a private campaign to discredit" him by calling him a thief, both "within and outside the boardroom."

After hearing oral argument, the trial court issued an order denying Chandler Lodge's special motion to strike "on the grounds that the moving defendant has failed to show that the action arises from acts in the furtherance of Chandler's right of petition and free speech under the constitutions of the United States and the State of California in connection with matters of a public issue."⁷

DISCUSSION

Section 425.16 -- the anti-SLAPP statute -- provides, "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 or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim."⁸ Under the statute, an "'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' 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; (4) or any other conduct in furtherance of the exercise of



Crutcher v. Chandler Lodge Foundation

2006 | Cited 0 times | California Court of Appeal | March 22, 2006

the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest."⁹

The anti-SLAPP statute "requires the [trial] court to engage in a two-step process. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. The moving defendant's burden is to demonstrate that the act or acts of which the plaintiff complains were taken 'in furtherance of the [defendant]'s right of petition or free speech under the United States or California Constitution in connection with a public issue,' as defined in the statute. [Citation.] If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim. Under section 425.16, subdivision (b)(2), the trial court in making these determinations considers 'the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.'"¹⁰

"'The defendant has the burden on the first issue, the threshold issue; the plaintiff has the burden on the second issue.'"¹¹ "In terms of the so-called threshold issue, the moving defendant's burden is to show the challenged cause of action 'arises' from protected activity. [Citations.]"¹² "[T]he statutory phrase 'cause of action . . . arising from' means simply that the defendant's act underlying the plaintiff's cause of action must itself have been an act in furtherance of the right of petition or free speech. [Citation.] In the anti-SLAPP context, the critical point is whether the plaintiff's cause of action itself was based on an act in furtherance of the defendant's right of petition or free speech. [Citations.] 'A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause [of action] fits one of the categories spelled out in section 425.16, subdivision (e)' [Citations.]"¹³

We review the trial court's rulings on an anti-SLAPP motion independently under a de novo standard of review.¹⁴

Both below and on appeal, Chandler Lodge argued Crutcher's complaint falls within subdivision (e)(3) or (4) of the anti-SLAPP statute. As set forth above, to fit within one of the categories outlined in these subdivisions, the statements or conduct the plaintiff challenges must have been made in connection with a public issue or an issue of public interest. "The definition of 'public interest' within the meaning of the anti-SLAPP statute has been broadly construed 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 governmental entity."¹⁵ As discussed more fully below, we find Chandler Lodge has not made a prima facie showing which demonstrates the alleged statements accusing Crutcher of stealing money from Chandler Lodge and the subsequent removal of Crutcher from the board of directors of Chandler Lodge satisfy the public issue/issue of public interest requirement.

Chandler Lodge relies on *Damon v. Ocean Hills Journalism Club*¹⁶ in support of its contention the



Crutcher v. Chandler Lodge Foundation

2006 | Cited 0 times | California Court of Appeal | March 22, 2006

alleged defamatory statements made in conjunction with matters before its board of directors were made in connection with a public issue or an issue of public interest. In *Damon*, a former manager of a homeowners association brought a defamation action against several association members, two members of the association's board of directors and a private homeowners association club after these defendants "criticized [his] competency to manage the Association and urged residents to replace [him] with a professional management company."¹⁷ The planned development residential community involved in this case was for seniors and it "consist[ed] of 1,633 homes, a golf course and many other recreational facilities."¹⁸ After the alleged defamatory statements were made, the plaintiff manager informed the homeowners association he did not intend to renew his management contract and the homeowners later voted to retain a professional management company.¹⁹

The trial court in *Damon* granted the defendants' anti-SLAPP motion. In affirming, the Court of Appeal held "the anti-SLAPP statute applied because the evidence showed the alleged defamatory statements were made 'in a place open to the public or in a public forum' and concerned 'an issue of public interest' within the meaning of" section 425.16, subdivision (e)(3).²⁰ In discussing the public issue requirement, the appellate court explained: "[E]ach of the alleged defamatory statements concerned (1) the decision whether to continue to be self-governed or to switch to a professional management company; and/or (2) [the plaintiff]'s competency to manage the Association. These statements pertained to issues of public interest within the Ocean Hills community. Indeed, they concerned the very manner in which the group of more than 3,000 individuals would be governed—an inherently political question of vital importance to each individual and to the community as a whole. [Citation.] Moreover, the statements were made in connection with the Board elections and recall campaigns."²¹ The Court of Appeal also stated: "Although the alleged defamatory statements were made in connection with the management of a private homeowners association, they concerned issues of critical importance to a large segment of our local population. 'For many Californians, the homeowners association functions as a second municipal government . . . [Citation.]'"²²

In the present case, Chandler Lodge has not made a prima facie showing which demonstrates the alleged defamatory statements were made in connection with a public issue or an issue of public interest within the meaning of the anti-SLAPP statute.²³ In its appellate brief, Chandler Lodge describes itself as "a nonprofit corporation which exists for the purpose of providing peer group support and facilities to assist persons who suffer from alcohol addiction to overcome their addiction. Chandler [Lodge] provides a meeting place where its members may hold and attend meetings of Alcoholics Anonymous." The fact Chandler Lodge may "serve[] a large group of persons" -- as Chandler Lodge asserts it does (with no citation to any evidence) -- does not necessarily mean the challenged conduct concerns a public issue or an issue of public interest.²⁴

Chandler Lodge has not demonstrated anything it does "affects [the] community in a manner similar to that of a governmental entity."²⁵ Nor has Chandler Lodge established the fact Crutcher was labeled as a thief and consequently removed from Chandler Lodge's board of directors "impact[ed] a broad segment of society."²⁶ Chandler Lodge has not even shown any of its members (other than board



Crutcher v. Chandler Lodge Foundation

2006 | Cited 0 times | California Court of Appeal | March 22, 2006

members) cared one way or the other whether Crutcher stayed on or was ousted from the board of directors.²⁷ Based on the record before us the conduct at issue may properly be characterized as a "private controversy."²⁸ There is no evidence these events got any "public" attention at all or were a concern to a substantial number of people.

Chandler Lodge did not show the anti-SLAPP statute applies to any of the causes of action in Crutcher's complaint.²⁹ Accordingly, the trial court properly denied its special motion to strike the complaint as a SLAPP suit.

DISPOSITION

The order is affirmed. Respondent is entitled to recover costs on appeal.³⁰

We concur: PERLUSS, P.J., WOODS, J.

1. All further statutory references are to the Code of Civil Procedure.
2. Subsequent allegations of the complaint and other pleadings of the parties make clear the "board" Crutcher refers to is Chandler Lodge's board of directors.
3. A few weeks before the hearing on Chandler Lodge's special motion to strike, the trial court overruled Chandler Lodge's demurrer and ordered it to answer Crutcher's complaint.
4. Chandler Lodge did not submit any evidence supporting the factual statements it made in its special motion to strike.
5. Section 425.16, subdivision (e)(4).
6. Crutcher made additional procedural and substantive arguments which he does not raise on appeal.
7. Both Chandler Lodge and Crutcher made requests for attorney fees in connection with the special motion to strike. The trial court denied Crutcher's request for attorney fees, finding no evidence the special motion to strike was frivolous or solely intended to cause unnecessary delay within the meaning of section 425.16, subdivision (c).
8. Section 425.16, subdivision (b)(1).
9. Section 425.16, subdivision (e).
10. Equilon Enterprises, LLC v. Consumer Cause, Inc. (2002) 29 Cal.4th 53, 67.
11. Kajima Engineering & Construction, Inc. v. City of Los Angeles (2002) 95 Cal.App.4th 921, 928.



Crutcher v. Chandler Lodge Foundation

2006 | Cited 0 times | California Court of Appeal | March 22, 2006

12. Kajima Engineering & Construction, Inc. v. City of Los Angeles, *supra*, 95 Cal.App.4th at page 928.
13. City of Cotati v. Cashman (2002) 29 Cal.4th 69, 78.
14. Kajima Engineering & Construction, Inc. v. City of Los Angeles, *supra*, 95 Cal.App.4th at page 929; ComputerXpress, Inc. v. Jackson (2001) 93 Cal.App.4th 993, 999.
15. Damon v. Ocean Hills Journalism Club (2000) 85 Cal.App.4th 468, 479; Macias v. Hartwell (1997) 55 Cal.App.4th 669, 674.
16. Damon v. Ocean Hills Journalism Club, *supra*, 85 Cal.App.4th 468.
17. Damon v. Ocean Hills Journalism Club, *supra*, 85 Cal.App.4th at pages 472- 473.
18. Damon v. Ocean Hills Journalism Club, *supra*, 85 Cal.App.4th at page 471.
19. Damon v. Ocean Hills Journalism Club, *supra*, 85 Cal.App.4th at page 473.
20. Damon v. Ocean Hills Journalism Club, *supra*, 85 Cal.App.4th at page 471.
21. Damon v. Ocean Hills Journalism Club, *supra*, 85 Cal.App.4th at page 479.
22. Damon v. Ocean Hills Journalism Club, *supra*, 85 Cal.App.4th at page 479; see also Macias v. Hartwell, *supra*, 55 Cal.App.4th at pages 673- 674 ("The public issue [within the meaning of the anti- SLAPP statute] was a union election affecting 10,000 members and [plaintiff's] qualifications to serve as president").
23. Du Charme v. International Brotherhood of Electrical Workers, Local 45 (2003) 110 Cal.App.4th 107, 110, 119 (where complaint alleged plaintiff "was wrongfully terminated from his employment as assistant business manager of Local 45, and a defamatory statement about his termination was posted on Local 45's Internet Web site" defendants did not make a *prima facie* showing the statements were made in connection with a public issue or an issue of public interest).
24. At oral argument, Chandler Lodge cited Terry v. Davis Community Church (2005) 131 Cal.App.4th 1534 in support of its argument the size and nature of the group to which Gordon made the alleged defamatory statements bring this case within the ambit of subdivision (e)(3) or (4) of the anti- SLAPP statute. As the Court of Appeal in Terry made clear, it is not the size or nature of the group to which statements are made that determines whether the public issue/interest requirement is satisfied. Indeed that court concluded subdivision (e)(4) "applies to private communications" when those communications concern "issues of public interest." (Terry v. Davis Community Church, *supra*, 131 Cal.App.4th at page 1546.) The Court of Appeal found the anti- SLAPP statute applied in Terry where a report to parents of church youth group members stating one of the group's leaders "was a sexual predator who engaged in an inappropriate sexual relationship with a minor female Church member," while only disseminated to "a few dozen people, [or] at most 100 persons" concerned issues of public interest": namely, "society's interest in protecting minors from predators,



Crutcher v. Chandler Lodge Foundation

2006 | Cited 0 times | California Court of Appeal | March 22, 2006

particularly in places such as church programs that are supposed to be safe." (Terry v. Davis Community Church, *supra*, 131 Cal.App.4th at pages 1539, 1547, 1549.) Here, as discussed more fully below, regardless of the number of people who overheard the alleged defamatory statements, Chandler Lodge has not established the communications concern a public issue or an issue of public interest.

25. Damon v. Ocean Hills Journalism Club, *supra*, 85 Cal.App.4th at page 479.

26. Damon v. Ocean Hills Journalism Club, *supra*, 85 Cal.App.4th at page 479; Du Charme v. International Brotherhood of Electrical Workers, Local 45, *supra*, 110 Cal.App.4th at pages 117- 118.

27. Weinberg v. Feisel (2003) 110 Cal.App.4th 1122, 1132 ("a matter of public interest should be something of concern to a substantial number of people").

28. Weinberg v. Feisel, *supra*, 110 Cal.App.4th at pages 1128, 1132 (plaintiff's action for defamation and emotional distress was not subject to the anti- SLAPP statute because defendant's alleged "campaign to oust plaintiff from the token collecting avocation" by labeling him as a thief constituted a "private controversy" and the communications were made to "a small group of other private parties").

29. Chandler Lodge has never specifically contended the wrongful conduct alleged in the complaint fits within the categories identified in subdivision (e)(1) or (2) of the anti- SLAPP statute. It did state in its reply brief on appeal, however, that any board meeting at which the alleged defamatory statements were made or Crutcher was removed from the board is an "official proceeding authorized by law." Chandler Lodge made this assertion in the context of its argument the boardroom is a "public forum" within the meaning of subdivision (e)(3) - - an argument we need not resolve on this appeal. Chandler Lodge did not claim subdivision (e)(1) or (2) is implicated by the allegations of the complaint. Nonetheless, we will briefly address the issue by stating a board of director's meeting or board action like that alleged here does not constitute an "official proceeding authorized by law" within the meaning of subdivisions (e)(1) and (2). We are aware of no authority holding (or indicating) otherwise.

30. Crutcher claims he is entitled to attorney fees on appeal because the anti- SLAPP motion was frivolous and/or solely intended to cause delay. Crutcher did not file a cross- appeal challenging the trial court's denial of his request for fees on these same bases. Nor did he file a motion to dismiss the appeal as frivolous (or even argue the appeal should be dismissed on this basis). Were the issue properly presented to this court, we would reject Crutcher's request for attorney fees on appeal. The record does not support his assertion the special motion to strike was frivolous and/or solely intended to cause delay within the meaning of section 425.16, subdivision (c).

