

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

DATE: 11/06/2013

TIME: 02:00:00 PM

DEPT: 53

JUDICIAL OFFICER PRESIDING: David Brown

CLERK: E. Brown

REPORTER/ERM: S. Adams CSR# 12554

BAILIFF/COURT ATTENDANT: C. Chambers

CASE NO: **34-2012-00130439-CU-MC-GDS** CASE INIT.DATE: 10/01/2012

CASE TITLE: **The National Grange of the Order of Patrons of Husbandry vs. The California State Grange**

CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Motion to Strike (SLAPP) - Civil Law and Motion - MSA/MSJ/SLAPP

APPEARANCES

William A Lapcevic, counsel, present for Defendant(s).

Michael A Farbstein, counsel, present for Cross - Defendant(s).

Daniel Stouder, counsel present for California State Grange

Nature of Proceeding: Motion to Strike (SLAPP)

TENTATIVE RULING

Cross-defendants Martha Stefonia and Shirley Baker's Special Motion to Strike the First Amended Cross-complaint of Robert McFarland is GRANTED in part and DENIED in part. C.C.P., sec. 425.16.

The notice of motion does not provide notice of the Court's tentative ruling system as required by with C.R.C., Rule 3.1308 and Local Rule 1.06(D). Local Rules for the Sacramento Superior Court are available on the Court's website at <http://www.saccourt.ca.gov/local-rules/local-rules.aspx> Counsel for moving party is ordered to notify opposing party immediately of the tentative ruling system and to be available at the hearing, in person or by telephone, in the event opposing party appears without following the procedures set forth in Local Rule 1.06(B).

First Amended Cross-Complaint

Defendant/Cross-Complainant Robert McFarland's cross-complaint was filed Nov. 15, 2012, against Cross-defendants The National Grange of the Order of Patrons of Husbandry ("National Grange"), Edward L. Luttrell and Martha Stefenoni.

The First Amended Cross-complaint ("FACC"), filed May 13, 2013, added Shirley Baker as a cross-defendant and alleges six causes of action: the 1st for defamation, the 2nd for public disclosure of private facts, the 3rd for intrusion, the 4th for intentional interference with contractual relations, the 5th for intentional interference with prospective business relations and the 6th for infliction of emotional distress.

Facts Alleged in the FACC

The allegations of the cross-complaint were: (1) that Stefenoni contacted Luttrell and falsely accused McFarland of wrongfully processing applications for new chapter Granges and attempting to seat unqualified delegates to the California Grange's annual convention; (2) that Stefenoni and Baker issued and published to Luttrell, the National Grange, and the California Grange executive committee and members, an unauthorized minority report of the executive committee's investigation of the actions of McFarland, as ordered by Luttrell; (3) that Stefenoni (serving as Acting Master of the California Grange during McFarland's suspension) began manufacturing further charges against McFarland, and obtained and provided Luttrell information concerning a 2009 real property legal dispute between the California Grange and the Vista Grange; (4) that Baker published Luttrell's letter of February 7, 2012, which allegedly was a confidential evaluation of McFarland's employment; (5) that the cross-defendants published false facts, allegations, and charges. Baker is named as a cross-defendant in all causes of action.

Stefenoni is named as a cross-defendant in the First, Fourth, Fifth and Sixth Causes of Action. Baker is named in all causes of action.

Special Motion to Strike

The individual cross-defendants Martha Stefenoni (Vice President and member of the Executive Committee of the California State Grange) and Shirley Baker (a member of the Executive Committee of the State Grange) move to strike all causes of action alleged against them.

Anti-SLAPP Procedure

The court's task in ruling on an anti-SLAPP motion to strike is as follows. Section 425.16, subdivision (b) (1) requires the 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. (§ 425.16, subd. (b)(1).) 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." *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal. 4th 53, 67.

Code Civ. Proc. § 425.16 (e) provides: "As used in this section, '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: . . . (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."

In a recent court of appeal decision, *Cho v. Chang* (2013) 219 Cal. App. 4th 521, 523, the appellate court held that where the causes of action in the cross-complaint combine allegations of conduct that is protected by the anti-SLAPP statute with conduct that is not, the trial court may strike the allegations in the cross-complaint attacking the protected activity while allowing the unprotected theories to remain. ["Striking the entire cause of action would plainly be inconsistent with the purposes of the statute. Striking the claims that invoke protected activity but allowing those alleging nonprotected activity to remain would defeat none of them. Doing so also is consonant with the historic effect of a motion to strike: "to reach certain kinds of defects in a pleading that are not subject to demurrer." (See 5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 1008, p. 420.)"]. Id. at. p. 527

Right of Petition or Free Speech In Connection With a Public Issue

Moving parties assert that their conduct and Constitutional right of free speech were in connection with a public issue, as they characterize the governance of the California Grange as "a quasi-governmental entity paralleling in almost every case the powers, duties and responsibilities of a municipal government", citing *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468 [allegedly defamatory statements about a homeowners' association manager were subject to the anti-SLAPP statute]

The relevant factual allegations include: On or about October 5, 2011, Stefenoni contacted Luttrell and the National Grange and falsely accused McFarland of wrongfully processing applications for several new California sub-chapter Granges and attempting to seat unqualified delegates for the State Grange's annual convention. (FACC, para. 11)

Luttrell tasked the Executive Committee to investigate the discrepancies in the dates of charter applications, the seating of alternate and affiliate delegates at the California State Grange's Annual Convention, and accusations of harassment and bullying in the California State Grange office by McFarland. (FACC, para. 13.)

After the State Grange Executive Committee investigated the accusations made by Stefenoni and issued its exoneration of McFarland, Stefenoni and Baker drafted an unauthorized "minority report" disputing the findings and conclusions of the majority and stating that in fact McFarland had acted improperly and should be removed from office. Stefenoni and Baker sent their minority report to Luttrell at the National Grange and then republished it to the State Grange. (FACC, para. 14-16.)

The Court finds that the governance of the State Grange constitutes a matter of public interest to the members of both the State and National Granges. The Courts are required to construe the phrase "public issue or issue of public interest" broadly. West's Ann.Cal.C.C.P. § 425.16(e)(4). *Hilton v. Hallmark Cards*, 599 F.3d 894 (9th Cir. 2010); *Bailey v. Brewer* (2011) 197 Cal. App. 4th 781. Here, the criticism of McFarland by Stefenoni and Baker regarding his acceptance of new State Grange subchapters with altered dates and improperly seating alternate delegates without proper credentials at the State Convention constitutes protected conduct in connection with a public issue.

However, the statements by Stefenoni and Baker about some of McFarland's conduct as an employee, specifically that McFarland engaged in conduct within the office which amounted to harassment, bullying, and the intimidation of employees had nothing to do with legislation or general public policy. (McFarland Decl., paras. 4, 14; Luvaas Decl., para. 2; Exh. A.)

Therefore, the Court does not conclude that the statements that McFarland was a "bully" in the workplace constitutes protected conduct regarding a matter of public interest. (FACC, paras. 12, 15, 23, 27, 30.)

As each of the six causes of action incorporates by reference the unprotected statements that McFarland was a bully in the workplace, none of the causes of action alleges only protected activity.

Probability of Prevailing on the Claim

As each of the causes of action allege both protected and unprotected activity, the Court cannot determine that the Cross-complainant McFarland has demonstrated a probability of prevailing on the entirety of each addressed cause of action.

The guiding principle in applying the anti-SLAPP statute to a mixed cause of action case is that a plaintiff cannot frustrate the purposes of the SLAPP statute through a pleading tactic of combining allegations of protected and nonprotected activity under the label of one cause of action. *Cho v. Chang, supra*, 219 Cal. App. 4th at 527.

Following the appellate court's decision in *Cho v. Chang* (2013) 219 Cal. App. 4th 521, as it must, this Court strikes the allegations in each of the causes of action of the FACC alleging protected activities while allowing the allegations of unprotected theories (harassment, bullying, and the intimidation of employees) to remain.

Under section 425.16, none of the causes of action is subject to being stricken in its entirety.

The Court grants the defendants application for an award of attorney fees, subject to the filing and service of a separate motion for such an award.

Cross-defendants shall file their Answers to the FACC, not later than Tuesday, Nov. 19, 2013.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

COURT RULING

The matter was argued and submitted.

The Court takes this matter under submission.