

Tentative Ruling—10/24/2008

Lewis Miranda v. Donald J. Myers BS 116339

Lissa Uvizi v. Donald J. Myers BS 116340

Petitioners filed a request for a civil harassment order Pursuant to CCP § 527.6. Petitioners' declarations allege the following facts:

Lewis Miranda, a member of the Church of Scientology, is a "receptionist" at one of the Church's locations. He claims that respondent, David J. Myers has been "stalking and harassing the Church workers that come and go out of that building." (Miranda Decl. ¶ 2) Miranda claims that Myers "makes it a point to yell and scream at me at the top of his lungs when I am attempting to talk on the telephone and attempting to deal with the many people going in and out of the building, as part of my job." (Miranda Decl. ¶ 3) He further claims that Myers was at the Church location on August 9th and 10th" engaging in the conduct previously mentioned and that Myers "rushed at me over 6 times from well over 40 or 50 feet away and then gotten very close to me and screamed at me." (Miranda Decl. ¶ 4) "I have seen him stalk several different women as they come out of the building and I have a real concern for the safety of myself and of these women as it appears to me he uses his size and threats to intimidate, purposely picking on people because of that." (Miranda Decl. ¶ 4) He continues, "[Myers'] harassive (sic) and intimidating behavior interferes with the safety, health and welfare of, not only me, but of the people that work in the building, as he has specifically targeted me because I am at the reception lobby and my co-workers, because of our religious beliefs." (Miranda Decl. ¶ 5)

Lissa Uvizl, also a member of the Church of Scientology, claims that Myers engaged in harassing conduct towards her. Uvizl claims three dates of harassment (5/10/08, 7/26/08, 8/10/08). Uvizl claims that Myers “has screamed at me through the door and windows of the Museum. He has also opened the doors at the Museum and yelled inside several times over the past several months. He has said at one time that he had been stalking me for two days which causes me great and emotional distress.” (Uvizl Decl. ¶ 4). Uvizl also described an incident of August 10, 2008 in which Myers confronted her as she left the Museum and walked with her a block to another location. A DVD visually depicting the incident was made an exhibit to the petition.

In response, Myers admits to protesting outside the Church building on July 22, August 11, and August 14, 2008. He denies, however, knowing Miranda and denies engaging in the harassing conduct alleged. (Myers Decl. filed in support of Anti-SLAPP Motion, ¶s 20, 21, 22, 26). Myers further denies stalking Uvizl but admits to confronting her on a public sidewalk as depicted on the DVD. (There seems to be some discrepancy about the date of the incident but whether it is August 10 or 11 is not relevant as both sides agree that the incident occurred.) Myers denies harassing Uvizl and claims he was exercising his constitutional right to protest on public property on a public issue. (Myers Decl. ¶ 27).

Miranda and Uvizl filed the current request alleging harassment based on Myers’ conduct. Neither petitioner claims to have been either assaulted or threatened with an assault. Myers filed a Motion to Strike pursuant to the Anti-SLAPP statute, CCP § 425.16. Myers denies harassing or stalking either of the petitioners, indeed he denies knowing who the petitioners are. He further claims that he was engaged in constitutionally protected activities

and hence his actions cannot be the basis for a civil harassment protective order.

Analysis

A person may file a request for a civil harassment protective order based upon “a willful course of conduct directed at a specific person that seriously alarms, annoys or harasses that person and that serves no legitimate purpose.” (CCP § 527.6(b) Constitutionally protected activity is not included within the meaning of ‘course of conduct.’ (CCP § 527.6(b)(3). A request for a civil harassment protective order may also be subject to a special motion to strike under the anti-SLAPP statute. (*Thomas v. Quintero* (2005) 126 Cal. App.4th 635, 652).

In examining the anti-SLAPP motion, the court is to engage in a two-step analysis. First the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. If the court finds that such a showing has been made, it must then determine whether the plaintiff has demonstrated the probability of prevailing on the claim. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 278-79.) In making both determinations, the court is to consider the “pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.” (*Equilon Enterprises, LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.)

As to the first prong of the analysis, the focus is not on the form of the cause of action but rather on the defendant’s actions giving rise to the alleged liability and whether those actions are speech or petition based. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 80). “Demonstrations, leafleting and publication of articles on the Internet to criticize government policy. . . constitute a classic exercise of the constitutional rights of petition and free

speech in connection with a public issue or an issue of public interest within the meaning of [CCP] section 425.16, subdivision (e)(4).” (*City of Los Angeles v. Animal Defense League* (2006) 135 Cal.App.4th 606, 620).

Furthermore, actions protected under the Anti-SLAPP provisions include matters made in a public place and “in connection with an issue of public interest.” (CCP § 425.16 (e)). Public interest, within the meaning of the anti-SLAPP statute, includes “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.” (*Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 479). Section 425.16 (e)(3) specifically protects oral statements made in a place open to the public. A “public forum” includes public streets (*Zhao v. Wong* (1996) 48 Cal.App.4th 1114, 1125-26) and internet websites (*Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 897).

The right of free speech, however, is not unlimited and “speech that constitutes ‘harassment’ within the meaning of section 527.6 is not constitutionally protected.” (*Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1250). Indeed section 425.16 cannot be invoked by a defendant whose asserted protected activity is illegal as a matter of law. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 317).

The illegal conduct exception to section 425.16 exists only if a “defendant concedes, or the evidence conclusively establishes that the assertedly protected speech or petition activity was illegal as a matter of law.” (*Flatley, supra*, 39 Cal.4th at 320). The question of whether the defendant’s conduct is illegal is part of the first prong analysis, preliminary and unrelated to the showing on the second prong of a probability of

prevailing. It is the plaintiff's burden to show that the activity is illegal as a matter of law. (*Flatley, supra, Soukup, supra*, 39 Cal.4th at 286-87.)

In *Novartis Vaccines and Diagnostics, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2006) 143 Cal.App.4th 1284, 1300, the court concluded that protests which included visits to the plaintiffs' employees' homes in which their windows were broken, cars' vandalized and personal information was published on the internet, were illegal activities as a matter of law.

Miranda Petition

The first prong of the analysis is whether the defendant (Myers in this case) has made a threshold showing that the challenged cause of action is one arising from a protected activity. The issue is whether Miranda's claim "arises from" an act of the respondent in furtherance of free speech in connection with a public issue. CCP § 425.16 (b) (1). The short answer in the case of the Miranda Petition is yes.

Here the Miranda declaration makes clear that the complained of conduct is based on Myers' protests against the Church. He acknowledges knowing Myers as someone "showing up at the [Church] and stalking and harassing the Church workers that come and go out of that building." (Miranda Decl. ¶ 3) He further notes that Myers, "has specifically targeted me because I am at the reception lobby and my co-workers, because of our religious beliefs." (Miranda Decl. ¶ 5) The Miranda Petition clearly arises from Myers' protests against the Church, an exercise of speech on a public issue.

Once the defendant establishes that the anti-SLAPP statute applies, the burden shifts to the plaintiff to demonstrate a 'reasonable probability' of success on the merits. (*Equilon Enterprises, supra*, 29 Cal.4th at 67.) On the

merits, Miranda must establish by clear and convincing that Myers engaged in a “course of conduct directed at a *specific person* that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose.” (CCP § 527.6(b). (Emphasis added.) Artificial entities such as corporations, partnerships, or associations cannot seek a civil harassment order. (*Huntingdon Life Sciences, Inc.*, *supra*, 129 Cal.App.4th at 1258.)

Here even petitioner’s own declaration demonstrates that the complained of conduct relates to his position as the receptionist at the Church. It is not alleged that Myers’ conduct took place anywhere else other outside the Church offices where Miranda was a receptionist. The conduct was not aimed at Miranda specifically but towards the Church generally. It is for this reason as well that petitioners’ reliance on *Brekke v. Wills* (2005) 125 Cal.App.4th 1400 is to no avail. In that case, the court ruled that private speech between private parties on a private matter are of a lesser concern to First Amendment issues thus rejecting a claim that a civil harassment injunction based on private letters violated the writer’s First Amendment rights. The conduct complained of by Miranda relates to Myers protests outside the Church’s offices. Matters of public interest include “activities that involve private persons and entities, especially when a large, powerful organization may impact the lives of many individuals.” (*Du Charme v. International Brotherhood of Elec. Workers, Local 45* (2003) 110 Cal.App.4th 107, 115-116.)

Furthermore, Miranda must establish that the complained of course of conduct constitutes substantial emotional distress. In making that determination, the courts have looked to the elements of the tort of intentional infliction of emotional distress. “[I]n the analogous context of the tort of intentional infliction of emotional distress, the similar phrase

'severe emotional distress' means highly unpleasant mental suffering or anguish 'from socially unacceptable conduct' (*Thing v. La Chusa* (1989) 48 Cal.3d 644, 648), which entails such intense, enduring and nontrivial emotional distress that 'no reasonable [person] in a civilized society should be expected to endure it.' (*Fletcher v. Western National Life Ins. Co.* (1970) 10 Cal.App.3d 376, 397.)" (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762-63.)

"The motivation for [CCP § 527.6] was the experience of a young woman who was hounded by a male admirer who followed her, incessantly telephoned her, etc. (*Schild, supra*, at p. 761.) The statute was designed to provide a quick and simple procedure by which the type of wholly unjustifiable conduct, having no proper purpose, could be enjoined. The statute is limited to protecting only those who have suffered "substantial emotional distress" caused by conduct "which serves no legitimate purpose." [Citation.] Nothing in the statute indicates that it was intended to supplant normal injunctive procedures applicable to cases concerning issues other than "harassment" as statutorily defined." (*Byers v. Cathcart* (1997) 57 Cal. App. 4th 805, 811.)

Here there are no allegations by Miranda that he was being followed or the recipient of incessant telephone calls. The concern that Miranda expresses in his declaration is for other individuals and by implication for the Church in having to endure the protests by Myers and others. This is not the conduct the civil harassment statute was meant to address. Miranda is unable to meet his burden that he is likely to prevail. The Anti-SLAPP motion by Myers against the petition by Miranda is granted. (CCP § 425.16.)

Uvizl Petition

The analysis as to the Uvizl Petition is the same except when it comes to the alleged harassing conduct. In the case of Uvizl, there are two visually recorded instances where Myers follows Uvizl from the Church offices. In one case Myers was shirtless and wearing a mask and was with someone who was videotaping the incident. In both cases Uvizl appears annoyed by Myers presence. As a result, the conduct complained of by Uvizl more closely resembles the conduct the civil harassment statute was meant to deter. In the visually recorded confrontation between Myers and Uvizl, Myers can be heard to make caustic and even insulting remarks about the Church and Uvizl's participation in the Church.

In order to meet her burden, Uvizl must establish the likelihood of prevailing in the civil harassment claim which itself must be established by clear and convincing evidence. (See, *Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71.) Pursuant to the evidence in the record, petitioner has met her burden. The Anti-SLAPP Motion as to Uvizl is denied.

Los Angeles Superior Court, Department 76

Judge Richard E. Rico