MICHAEL GUEN et al., Plaintiffs and Appellants,
v.
JULA PEREIRA et al., Defendants and Respondents.

A151569

COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT DIVISION FIVE

November 16, 2018

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

(Sonoma County Super. Ct. No. SCV259702)

Plaintiffs and appellants Michael Guen and Patricia Bernard (appellants) filed a lawsuit against defendants and respondents Jula Pereira and Joerg Hilger (respondents), alleging a defamation cause of action and three causes of action alleging interference with business relations. The claims arise out of a website created by respondents that accuses appellant Guen of running a cult, among other misconduct. Respondents moved to strike the complaint pursuant to the anti-SLAPP statute,[1] section 425.16 of the Code of Civil Procedure (Section 425.16). The trial court granted the motion. We affirm.

BACKGROUND

In November 2016, appellants filed the present lawsuit against respondents and Doe defendants. According to the allegations of the complaint, appellant Guen is a certified acupuncturist, psychologist, and practitioner of traditional Chinese medicine. Appellant Bernard "administers a teenage girl empowerment program and operates

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teengirlempowerment.com." The complaint alleges respondents "posted defamatory content about [appellants] on the internet," including on a website called cultrescue.com. The complaint asserts causes of action for defamation, interference with economic relations, intentional interference with prospective business relations, and negligent interference with prospective business relations.

In February 2017, respondents moved to strike the complaint under Section 425.16. In support of the motion, respondent Pereira filed a declaration that states she is the plaintiff in a separate civil action, "the gist of which is that Michael Guen lied to, brainwashed and exploited me for sex, free labor and adulation for a 10-year period of time." According to the declaration, Bernard "assisted Guen in the day-to-day operation and control of the cult," and Pereira was "deprogrammed" in May 2013 due to an "intervention" initiated by respondent Hilger. Thereafter, in September 2013, Pereira complained to the Acupuncture Board of the California Department of Consumer Affairs "that Guen had manipulated me to submit to his psychological and sexual exploitation of my person."

Respondent Pereira's declaration explains that she and respondent Hilger launched the website cultrescue.com in October 2013 because Pereira "believed that Guen and his organization presented a serious health risk to the population of vulnerable, idealistic wom[e]n, particularly because Guen disguised his true intentions by pretending to help people." Pereira states she "felt a personal moral duty to expose Guen and his organization for the danger to public health that I believe they present." She admits

that the website, among many other things, accuses Guen of running a "destructive cult," of defrauding her of money, and of being a "psychopath." The website includes "testimony" from other "ex-member[s]" of Guen's "group" who, among other things, claim Guen had sexual relations with many of his students. The declaration describes the website in detail; it is extensive and contains many pages of content accusing Guen in very strong language of being a manipulative cult leader who exploits group members for money and sex.

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As detailed in Pereira's declaration, the website also contains a section entitled "Warning to the Parents of Teenage Girls." It states, among other things: "Earlier this year, I came across the website for the Teen Girl Empowerment Program. . . . As I went through the website, I felt incredible concern for the young teenage girls and their parents who are being lured into participating into this program. My biggest concern is that this program is being co-taught by Michael Guen, a man who has crossed over boundaries with his students over the years. [¶] The women who are 'instructors' for the Teen Empowerment Program have been influenced over the years to serve his interests only. I have no doubt in my mind that this new website is just another way for Michael Guen to profit immensely from the public, especially as the parents of the teen group are recruited into his destructive cult." The website also warns, "I am writing to you, the parents of the young teens who may wish to join this 'empowerment' program. Do not let this group fool you. Do not trust this man and his instructors. They will take advantage of you. You will pay money for your children to be abused."

In moving under Section 425.16, respondents requested that the trial court take judicial notice of documents related to Pereira's May 2015 civil action against Guen and her complaint to the Acupuncture Board. The documents included an August 2015 "Accusation" against Guen brought by the Acupuncture Board and a May 2016 decision of the Acupuncture Board. The decision found that Guen had "engaged in consensual sexual relations with his patient" and imposed "a stayed revocation with a five-year term of probation" contingent on, among other things, a psychological examination. The trial court granted the request for judicial notice over appellants' objection.[2]

In opposing the Section 425.16 motion, appellants Guen and Bernard submitted declarations, and they also submitted declarations from a number of other individuals.

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Appellants denied they were operating a cult and denied the allegations made on respondents' website. As relevant to their economic interference claims, appellants averred, "After [respondents] published the above-listed cult rescue website, our team of business consultants dissolved. The team included a web designer, branding/marketing expert, graphic artist, video editor, and social media director. The product creative team was comprised of approximately six members. These individuals were supposed to receive payments as they worked on educational materials (e.g., manuals, instruction guides, and guidelines). However, we were not able to meet our financial obligations due to [respondents'] actions, including, but not limited to, interference with business relations." The other individuals expressed admiration for appellant Guen's professional abilities and denied he was the leader of a cult.

In April 2017, the trial court granted respondents' Section 425.16 motion. The court concluded respondents' "conduct is clearly protected activity within the ambit of [Section 425.16]. [Appellants] are suing

[respondents] for speech which they published on a website, the same as the speech made in contemporaneous state disciplinary proceedings and subsequent lawsuit. The speech is also on a matter of public interest and in a public forum." The court further concluded appellants had failed to show a probability of success on their claims, reasoning that the defamation claim was untimely and that appellants had failed to show the knowing interference required to sustain the economic interference claims. The court dismissed appellants' complaint and reserved jurisdiction to consider respondents' request for attorney fees.

DISCUSSION

I. *The Anti-SLAPP Law*

"In 1992, the Legislature enacted [S]ection 425.16 in an effort to curtail lawsuits brought primarily 'to chill the valid exercise of . . . freedom of speech and petition for redress of grievances' and 'to encourage continued participation in matters of public significance.' (§ 425.16, subd. (a).) The section authorizes a special motion to strike '[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 [Constitution] or [the]

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California Constitution in connection with a public issue . . . .' (§ 425.16, subd. (b)(1).) The goal is to eliminate meritless or retaliatory litigation at an early stage of the proceedings. [Citations.] The statute directs the trial court to grant the 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.' (§ 425.16, subd. (b)(1).)" (*Gallimore v. State Farm Fire & Casualty Ins. Co.* (2002) 102 Cal.App.4th 1388, 1395-1396, fn. omitted (*Gallimore*).)

"The statutory language establishes a two-part test. First, it must be determined whether the plaintiff's cause of action arose from acts by the defendant in furtherance of the defendant's right of petition or free speech in connection with a public issue. [Citation.] 'A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in [S]ection 425.16, subdivision (e).' [Citation.] Assuming this threshold condition is satisfied, it must then be determined that the plaintiff has established a reasonable probability of success on his or her claims at trial." (*Gallimore*, *supra*, 102 Cal.App.4th at p. 1396.) "Whether [S]ection 425.16 applies and whether the plaintiff has shown a probability of prevailing are both legal questions which we review independently on appeal." (*Ibid.*)

II. *Appellants' Economic Interference Claims Arise Out of Protected Conduct*

Appellants' economic interference claims[3] arise from the negative statements about appellant Guen on respondents' website.[4] The most clearly relevant category of activity protected by the anti-SLAPP law is Section 425.16, subdivision (e)(3), which

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encompasses "written or oral statement[s] or writing[s] made in a place open to the public or a public forum in connection with an issue of public interest." Appellants argue respondents' "venom-filled website is not a public forum within the meaning of the First Amendment." But it is well-established that "[w]eb sites accessible to the public . . . are 'public forums' for purposes of the anti-SLAPP statute." (*Barrett v. Rosenthal* (2006) 40 Cal.4th 33, 41, fn. 4; see also, e.g., *Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 895 (*Wilbanks*).) Appellants suggest respondents' website is not a public forum because others cannot post their own views on the site. We agree with the *Wilbanks* court,

which rejected a similar claim that the defendant's website was not a "true public forum" because the defendant "controls her site, and does not post information or opinions from other sources." (*Wilbanks*, at p. 895.) *Wilbanks* reasoned that, although the defendant controlled her website, "she does not control the Web. Others can create their own Web sites or publish letters or articles through the same medium, making their information and beliefs accessible to anyone interested in the topics discussed in [the defendant's] Web site." (*Id.* at p. 897; accord *Chaker v. Mateo* (2012) 209 Cal.App.4th 1138, 1146 (*Chaker*).)

Appellants also argue respondents cannot rely on the existence of disciplinary proceedings against appellant Guen "to magically transform their online statements to statements pertaining to a public issue." However, that is not the basis for respondents' claim of public interest. The term "issue of public interest" is construed broadly in the anti-SLAPP context. (*Hecimovich v. Encinal School Parent Teacher Organization* (2012) 203 Cal.App.4th 450, 464.) An issue of public interest is "*any issue in which the public is interested*." (*Nygård, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1042.) The issue does not need to be "significant" to be covered by Section 425.16. (*Ibid.*) As respondents point out, the accusations on their website can be viewed as consumer protection information of public interest, given the allegations of sexual misconduct and cult-like brainwashing by an acupuncturist. Appellants fail to respond to respondents' argument. Respondents have shown their website addresses an issue of public interest within the meaning of Section 425.16. (See, e.g., *Wilbanks*, *supra*, 121

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Cal.App.4th at p. 900 [the defendant's statements were "in the nature of consumer protection information" and "directly connected to an issue of public concern" because they were "a warning not to use plaintiffs' services"]; *Chaker*, *supra*, 209 Cal.App.4th at p. 1146 ["The statements posted to the Ripoff Report Web site about [the plaintiff's] character and business practices plainly fall within in the rubric of consumer information about [the plaintiff's] 'Counterforensics' business and were intended to serve as a warning to consumers about his trustworthiness."].)

Accordingly, the trial court properly found that appellants' action arose out of activity protected by the anti-SLAPP statute.

III. *Appellants Failed to Show a Probability of Prevailing on Their Economic Interference Claims*[5]

Because appellants' economic interference claims arise out of protected activity, they bore the burden of demonstrating " ' "that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited." ' " (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88-89.) "We do not weigh credibility, nor do we evaluate the weight of the evidence. Instead, we accept as true all evidence favorable to the plaintiff and assess the defendant's evidence only to determine if it defeats the plaintiff's submission as a matter of law." (*Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 699-700.)

"The tort of intentional or negligent interference with prospective economic advantage imposes liability for improper methods of disrupting or diverting the business relationship of another which fall outside the boundaries of fair competition. [Citation.] It is premised upon the principle, ' "[e]veryone has the right to establish and conduct a lawful business and is entitled to the protection of organized society, through its courts, whenever that right is unlawfully

invaded." ' " (*Settimo Associates v. Environ Systems, Inc.* (1993) 14 Cal.App.4th 842, 845.) The elements of the tort include " ' "(1) an

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economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant." ' " (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153 (*Korea Supply*).)

The trial court concluded appellants had not shown a probability of prevailing on their economic interference claims because they failed to show respondents knowingly interfered with any particular economic relationship. The court reasoned, "Aside from showing that [respondents] clearly targeted their statements to the potential customers of the general public, and generally tried to interfere with [appellants'] ability to obtain customers by warning away customers," appellants failed to provide evidence of any clients turned away due to respondents' statements. Regarding the team of consultants appellants assembled to create a new website, the court noted that "nothing indicates that [respondents] knew of this or actually interfered with it."

Appellants do not dispute they have failed to identify any particular clients they lost due to respondents' website. Instead, they argue they "had an existing business together consisting of acupuncture, healing, and empowerment" and "they were poised to expand that existing business with the website and a new offering of online courses." Respondents interfered with that "expansion . . . to a different market: online courses for teen women empowerment." However, appellants' expectation of profit from their website was not the kind of "probability of future economic benefit" (*Korea Supply*, *supra*, 29 Cal.4th at p. 1153) that could support their economic interference claims. As the Supreme Court recently explained, "a cause of action for tortious interference has been found lacking when either the economic relationship with a third party is too attenuated or the probability of economic benefit too speculative." (*Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 515 (*Roy Allan*).)

The *Roy Allan* decision discussed with approval the decision in *Westside Center Associates v. Safeway Stores 23, Inc.* (1996) 42 Cal.App.4th 507 (*Westside Center*),

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which interpreted Supreme Court precedent "to require proof that the defendant had disrupted a particular relationship with a known third party." (*Roy Allan*, *supra*, 2 Cal.5th at p. 516.) In *Westside Center*, the plaintiff owned a shopping center; Safeway was an "anchor tenant." (*Westside Center*, at pp. 510-511.) The facts are complex, but, in essence, Safeway closed its store but renewed its lease, leaving the anchor premises vacant and harming business at the rest of the center. (*Id.* at pp. 512-515.) Foreclosure proceedings were initiated, and, after the plaintiff sold its property interest, it sued Safeway for, among other things, tortious interference with prospective economic advantage. (*Id.* at p. 515-516.) The plaintiff alleged Safeway interfered with its relationship with "the class of all potential buyers for [the] property." (*Id.* at p. 523.) The court of appeal upheld the trial court's dismissal, reasoning the plaintiff's " 'lost opportunity' " claim was unduly speculative because "[i]t assumes what normally must be proved, i.e., that it is reasonably probable the plaintiff would have received the expected benefit had it not been for the defendant's

interference." (*Id.* at p. 523.) The court emphasized the requirement of an existing relationship, holding that the interference tort "protects the expectation that the relationship eventually will yield the desired benefit, not necessarily the more speculative expectation that a potentially beneficial relationship will eventually arise." (*Id.* at p. 524.) The court concluded the plaintiff's theory "fail[ed] to provide any factual basis upon which to determine whether the plaintiff was likely to have actually received the expected benefit. Without an existing relationship with an identifiable buyer, [plaintiff]'s expectation of a future sale was 'at most a hope for an economic relationship and a desire for future benefit.' " (*Id.* at p. 527; see also *Roy Allan*, at p. 516 [summarizing *Westside Center*].)

Westside Center, discussed with approval in *Roy Allan*, is dispositive of appellants' economic interference claims based on alleged lost future clients of appellants' existing business and planned teen empowerment website. Appellants' expectation of future clients "was 'at most a hope for an economic relationship and a desire for future benefit.' " (*Westside Center*, 42 Cal.App.4th at p. 527.) Appellants cite no authority to the contrary.

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Finally, appellants contend they made a prima facie showing respondents interfered with their relationship with their team of "business consultants" connected to their planned teen empowerment website. The trial court appeared to find appellants made a prima facie showing respondents' website caused the dissolution of the team of consultants, but the court found there was no evidence respondents knew of the relationship between appellants and the team. Given that appellants have failed to identify any clients lost due to respondents' website, we are skeptical appellants have shown any causation between the website and the alleged loss of revenue that led to dissolution of the team of consultants.[6] In any event, we agree with the trial court's finding that appellants have failed to present evidence respondents knew of the relationship between appellants and the consultants. (*Korea Supply*, *supra*, 29 Cal.4th at p. 1153.)[7] Furthermore, appellants failed to show a "probability of future economic benefit" (*ibid.*) from the relationships with the consultants, because the only economic benefit to appellants would have come from the success of their teen empowerment website, which we have already concluded was too speculative to support their claims.

Because the trial court properly concluded appellants failed to make a prima facie showing on all the elements of the economic interference claims, the court properly struck the causes of action under Section 425.16 and dismissed the complaint.

DISPOSITION

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The trial court's order is affirmed. On remand, the trial court may consider any request for an award of attorney fees on appeal. Costs on appeal are awarded to respondents.

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/s/_____
SIMONS, Acting P.J.

We concur.

/s/_____
NEEDHAM, J.

/s/_____
BRUINIERS, J.

Footnotes:

1. "SLAPP is an acronym for 'strategic lawsuit against public participation.' " (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 732, fn. 1 (*Jarrow Formulas*).)

2. On appeal, appellants argue the noticed documents are not relevant to whether appellants showed a probability of prevailing on their claims. We agree with appellants that the materials noticed by the trial court do not affect our analysis of the issues on appeal. Moreover, we deny respondents' April 6, 2018 request for judicial notice of an August 2017 Acupuncture Board decision because it is not relevant to the issues on appeal. (See *People v. Rowland* (1992) 4 Cal.4th 238, 268, fn. 6.)

3. The complaint alleges three separate causes of action for "interference with economic relations," "intentional interference with prospective business relations," and "negligent interference with prospective business relations." On appeal, appellants argue they showed a probability of prevailing on a claim for "interference with prospective economic advantage," without specifying the relevant cause of action in the complaint. Given that appellants do not argue there are relevant differences between the three causes of action for the purpose of the present appeal, we address all three of the economic interference claims jointly.

4. Appellants also refer to a "letter" respondent Pereira purportedly sent to "Guen and Bernard's existing and prospective clients." However, appellants cite to no competent evidence of any such letter.

5. Appellants do not challenge the trial court's conclusion they failed to show a probability of prevailing on their defamation claim because it was untimely.

6. Appellants' declarations assert that "[a]fter [respondents] published the . . . cult rescue website, our team of business consultants dissolved." Temporal correlation is not causation. Appellants also assert, "we were not able to meet our financial obligations [to the team of business consultants] due to [respondents'] actions." But that conclusory statement does not constitute competent evidence that respondents' website impacted appellants' finances. Notably, consequences flowing from the disciplinary proceedings against Guen cannot be conflated with consequences from the website itself, which is the basis of the present lawsuit.

7. Appellants cite evidence respondents knew of appellants' intent to expand their business through a website, but they point to no evidence respondents knew of appellants' relationships with the team of business consultants.
