FIRST DIVISION
February 14, 2017

No. 1-16-0294
2017 IL App (1st) 160294-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BOCK & HATCH, L.L.C., a limited liability company, and PHILIP A. BOCK, an individual,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellees,	)	
v.	)	No. 14 CH 863
MCGUIREWOODS, LLP, a limited liability partnership,	)	Honorable Jean Pendergast Rooney, Judge Presiding.
Defendant-Appellant.	)	

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court properly denied McGuireWoods' motion to dismiss plaintiffs' first amended complaint as a SLAPP under the Participation Act.

¶ 2 This appeal stems from the trial court's denial of defendant McGuireWoods, LLP's motion to dismiss plaintiffs Bock & Hatch, L.L.C.'s and Philip A. Bock's first amended complaint, which alleged a violation of the Illinois Uniform Deceptive Trade Practices Act

(UDTPA) (815 ILCS 510/1 *et seq*. (West 2012)), as barred by the Citizen Participation Act (Participation Act) (735 ILCS 110/1 *et seq*. (West 2012)). McGuireWoods brought this appeal pursuant to Illinois Supreme Court Rule 306(a)(9) (eff. Mar. 8, 2016), which allows for a party to petition for leave to appeal from an order of the circuit court denying a motion to dispose under the Participation Act. The question is whether the first amended complaint on its face is a strategic lawsuit against public participation (SLAPP) that must be dismissed under the Participation Act, or whether the trial court properly denied McGuireWoods' request to dismiss the first amended complaint. We find that the trial court's order denying McGuireWoods' motion to dismiss the first amended complaint was proper.

¶ 3 Plaintiffs brought suit against McGuireWoods in connection with two entries posted on McGuireWoods' blog website, discussing litigation in which Block & Hatch was one of two law firms representing class action plaintiffs. McGuireWoods published its first post on November 25, 2011, discussing the case of *Creative Montessori Learning Center v. Ashford Gear, LLC*, 662 F. 3d 913 (7th Cir. 2011), and the proceedings in the courts below. McGuireWoods described the issue in the blog post to be "under what circumstances a court may find class counsel inadequate to represent a class." The post noted that:

> "[o]ne of [the] plaintiffs' firms was Bock & Hatch LLC. (Bock & Hatch was also the firm that brought the *CE Design* case.) The firm got hold of a list of possible faxes and recipients from a 'blast fax' company (a company that sent out the faxes in batches to numbers it had collect). It had promised the company confidentiality when it obtained the list, but its plan was to use the list to file more than 50 class actions."

¶ 4 The post went on to state that in order to "get clients, [Bock & Hatch] sent letters (addressed from another involved firm, Anderson + Wanca) to various companies" that indicated they could be part of a class action for having received a blast fax. The post stated, "The trial court ruled that, while the firm's actions displayed a lack of integrity, the proper remedy was discipline by the Illinois bar. It also ruled that the firm's conduct did not affect its ability to represent a class."

¶ 5 On January 15, 2013, McGuireWoods published a second post, this one discussing the case of *Reliable Money Order, Inc. v. Sales Co., Inc.*, 794 F. 3d 489 (7th Cir. 2013). McGuireWoods identified *Reliable Money Order* as *Ashford Gear*'s "companion case." It stated that in *Ashford Gear*, "one of the plaintiff's firms, Bock & Hatch, had lied to a witness about keeping a list of possible faxes and recipients confidential."

¶ 6 Plaintiffs' original complaint had four separate counts: (I) libel as to the 2011 article, (II) libel as to the 2013 article, (III) a claim under the UDTPA, and (IV) commercial disparagement. McGuireWoods filed a motion to dismiss all four counts. The trial court dismissed count I as untimely, count II as non-actionable under the "innocent construction" rule and the "fair report" privilege, and count IV because Illinois no longer recognizes a claim for common law commercial disparagement. As to count III, the trial court dismissed plaintiffs' request for compensatory and punitive damages, but found that plaintiffs stated a viable claim for injunctive relief, and therefore granted leave to file an amended complaint on that claim.

¶ 7 Plaintiffs then filed their first amended complaint, seeking only injunctive relief under their UDTPA claim. Plaintiffs alleged that contrary to McGuireWoods' representations on its website, the trial court in *Ashford Gear* never found any misconduct or lack of integrity by plaintiffs and never stated or implied that discipline by the Illinois Bar was warranted. Plaintiffs

argued that by virtue of McGuireWoods' incorporation of certain quoted material on its publicly-accessible website, McGuireWoods engaged in the unprivileged publication of defamatory and libelous statements, and that the articles violated the UDTPA.

¶ 8 McGuireWoods filed a motion to dismiss under section 2-619(a)(9) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2012)), asserting that plaintiffs' complaint amounted to a SLAPP, which is prohibited under the Participation Act. It argued that its two blog posts on its website were in furtherance of its "political rights" and that plaintiffs' suit was solely based upon McGuireWoods' exercise of its political rights because their suit was both meritless and retaliatory.

¶ 9 On January 12, 2016, the trial court issued a memorandum and order denying McGuireWoods' motion to dismiss pursuant to the Participation Act.[1] The trial court found that McGuireWoods' motion to dismiss did not clearly demonstrate that count III of the complaint was a SLAPP. The trial court noted that McGuireWoods' blog posts were not speech of the type sought to be protected by the Participation Act, as the posts "[could] only be fairly read as summaries of the law and facts articulated by the Seventh Circuit Court of Appeals in its written opinions." The trial court noted that the articles do not reveal advocacy of any readily discernible political activity. The trial court stated that it could not find plaintiffs' complaint to be meritless as contemplated by the Participation Act because McGuireWoods had not defeated any essential element of the UDTPA cause of action. The trial court denied that motion to dismiss and granted McGuireWoods leave to file an interlocutory appeal pursuant to Illinois Supreme Court Rule 306(a)(9) (eff. Mar. 8, 2016).

¶ 10 McGuireWoods argues in its brief on appeal that its posts were fair and accurate summaries of the two court opinions, and therefore protected as public participation speech by

[1] No transcript of proceedings was included in the supporting record.

the Participation Act. McGuireWoods contends that plaintiffs' suit was a meritless and retaliatory effort to stifle its constitutional rights to free speech and to petition the government. Plaintiffs maintain that the Participation Act does not protect against false or misleading factual accusations in a law firm's website blog, and therefore the trial court properly dismissed McGuireWoods' motion to dismiss pursuant to the Participation Act.

¶ 11 A motion to dismiss brought pursuant to section 2-619(a)(9) of the Code allows for dismissal when the claim asserted against the defendant is "barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2012). A motion to dismiss based on the immunity conferred by the Participation Act is appropriately raised in a section 2-619(a)(9) motion. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 54. A motion to dismiss under section 2-619(a) admits the legal sufficiency of the plaintiff's claim but asserts certain defects or defenses outside the pleadings which defeat the claim. *Wallace v. Smyth*, 203 Ill. 2d 441, 447 (2002). When ruling on the motion, the court should construe the pleadings and supporting documents in the light most favorable to the nonmoving party. *Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008). The court must accept as true all well-pleaded facts in plaintiff's complaint and all inferences that may reasonable be drawn in plaintiff's favor. *Sandholm*, 2012 IL 111443, ¶ 55. "The question on appeal is 'whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law.' " *Id.* (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993). Our review is *de novo*. *Id.*

¶ 12 Illinois enacted anti-SLAPP legislation in the form of the Participation Act in 2007. The term "SLAPP," or "Strategic Lawsuit Against Public Participation" describes "lawsuits aimed at preventing citizens from exercising their political rights or punishing those who have

done so." *Wright Development Group, LLC v. Walsh*, 238 Ill. 2d 620, 630 (2010). "SLAPPs use the threat of money damages or the prospect of the cost of defending against the suits to silence citizen participation." *Walsh*, 238 Ill. 2d at 630. An example of a SLAPP suit is " 'one filed by developers, unhappy with public protest over a proposed development, filed against leading critics in order to silence criticism of the proposed development.' " *Sandholm*, 2012 IL 111443, ¶ 33 (quoting *Westfield Partners, Ltd. v. Hogan*, 740 F. Supp. 523, 525 (N.D. Ill. 1990)). "A SLAPP is 'based upon nothing more than defendants' exercise of their right, under the first amendment, to petition the government for a redress of grievances.' " *Id*.

¶ 13 SLAPPs are meritless, as the plaintiffs in SLAPP suits do not intend to win, but rather to stifle a defendant's speech or protest activity and discourage opposition through delay, expense, and distraction. *Id*. at ¶ 34. "Because winning is not a SLAPP plaintiff's primary motivation, the existing safeguards to prevent meritless claims from prevailing were seen as inadequate, prompting many states to enact anti-SLAPP legislation." *Id*. at ¶ 35.

¶ 14 Section 15 of the Participation Act requires the moving party to demonstrate that the plaintiff's complaint is "based on, relates to, or is in response to any act or acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government." 735 ILCS 110/15 (West 2008). If the moving party has met his or her burden of proof, the burden then shifts to the responding party to produce "clear and convincing evidence that the acts of the moving party are not immunized from, or are not in furtherance of acts immunized from, liability" under the Participation Act. 735 ILCS 110/20(c) (West 2008). Thus, McGuireWoods had the initial burden of proving that plaintiffs' lawsuit was solely "based on, relate[d] to, or in response to" their acts in furtherance of their rights of petition, speech or association, or to participate in government. Only if McGuireWoods met that

burden would plaintiffs have to provide clear and convincing evidence that McGuireWoods' acts were not immunized from liability under the Participation Act.

¶ 15 We agree with the trial court that based on the supporting record, plaintiffs' lawsuit was not solely based on, related to, or in response to the acts of McGuireWoods in furtherance of the rights of petition and speech. The blog posts in question summarized cases and discussed the ramifications for the case law. This is not the type of activity that the legislature sought to protect. In *Goral v. Kulys*, 2014 IL App (1st) 133236, an individual's blog post reporting the results of research regarding the property holdings of a former candidate for public office was considered speech in furtherance of the individual's right to participate in government. In *Ryan v. Fox TV Stations, Inc*., 2012 IL App (1st) 12005, ¶ 19, we found it was indisputable that an investigatory report of certain activity by Cook County judges was speech in furtherance of the right to participate in government. These examples are inapposite to the case before us. Here, plaintiffs' lawsuit does not resemble a strategic lawsuit intended to chill McGuireWoods' participation in government or to stifle its political expression. It appears that the goal of plaintiffs' lawsuit was not to interfere with and burden McGuireWoods' free speech and petition rights, but rather to seek injunctive relief for the personal harm to their reputation from McGuireWoods' alleged acts. At the very least, there is certainly the existence of a genuine issue of material fact regarding this issue that precluded the dismissal of plaintiffs' lawsuit. *Sandholm*, 2012 IL 111443, ¶ 55.

¶ 16 We note that we express no opinion on the actual merits of plaintiffs' cause of action here. We simply find that their lawsuit is not a SLAPP within the meaning of the Participation Act, and that the trial court's denial of McGuireWoods' motion to dismiss based on the Participation Act was therefore proper.

¶ 17 We affirm the trial court's denial of McGuireWoods' motion to dismiss.

¶ 18 Affirmed.