FST-CV26-6080753-S	:	**SUPERIOR COURT**
	:	
	:	**Stamford J.D.**
SERGEI LEMBERG; LEMBERG LAW, LLC	:	**At Stamford**
	:	
v.	:	
	:	
STACY OLSON	:	**June 11, 2026**

SPECIAL MOTION TO DISMISS PURSUANT TO CONN. GEN. STAT. 52-196a

Pursuant to Conn. Gen. Stat. § 52-196a, the Defendant, Stacy Olson, moves to dismiss the complaint in its entirety and for an award of costs and attorneys' fees.

An attorney's former client (Stacy Olson) left a negative review. The attorney retaliated by forcing her to defend a civil action thousands of miles from home.

Strip all of the inflammatory accusations and hyper-sensitive and self-serving framing out of the complaint, and this retaliatory purpose becomes crystal clear. Stacy Olson was a paying Arizona client who felt poorly served by her attorney. She did what millions of Americans do every day: she went online and left an honest review. She described her experience in her own words about a matter that directly affected her. When confronted, she edited her reviews, but did not retract them – because, both as originally written and edited, they were (1) true and (2) constitutionally protected opinions.

For this, the plaintiffs have hauled her into a court in a jurisdiction far from home and deployed the full machinery of civil litigation against a former client whose only "offense" was telling the truth about her experience. That is not a legitimate grievance or an honest quest for justice. It is bullying and intimidation in its rawest form.

Conn. Gen. Stat. § 52-196a exists precisely to quash such bullying and intimidation. It protects citizens who express opinions on matters of public concern from

being silenced by the threat of ruinous litigation. An attorney's ethics and the quality of service they render are unambiguously a matter of public concern, and Olson's reviews addressed exactly that.

Thus, this case is the textbook SLAPP suit: expensive to defend, designed to silence protected speech, and fundamentally at odds with the constitutional values Connecticut law is committed to protecting. Thus, the Court should dismiss this complaint and case in its entirety, award Olson her attorneys' fees and costs, and send a clear message that Connecticut's courts are not instruments of retaliation against citizens who dare to criticize lawyers.

BACKGROUND

I. Factual Background:

In March 2025, Stacy Olson retained the plaintiffs to represent her with respect to a Lemon Law claim pertaining to a 2023 Dodge Charger. **Exhibit A – Affidavit of Stacy Olson, ¶ 4.** Her intakes with the plaintiffs was handled by Luca Richo, a client coordinator, beginning on March 5, 2025. *Id*. at ¶ 8. On March 10, 2025, one of the plaintiffs' paralegals, Yana Kholevchuk, emailed Olson to request documents and to inform her that another paralegal, Olga Voytovych, was assigned to her case. *Id*. at ¶ 8. Olson responded by emailing Kholevchuk a link to her case documentation on March 12, 2025. *Id*. at ¶ 9. After some technical difficulties, Kholevchuk confirmed that she could access Olson's documents on April 4, 2025. *Id*. at ¶ 10.

From April 4, 2025 to May 22, 2025, Olson did not hear anything from the plaintiffs so, on May 22, 2025, she emailed Kholevchuk and Richo asking for a case update as well as guidance on how to proceed. *Id*. at ¶¶ 11-12. Olson then forwarded this email to

Voytovych on May 28, 2025 after she called the plaintiffs and Richo instructed her to contact Voytovych. *Id*. at ¶ 13. After Olson did not receive a response, she called the plaintiffs on June 2, 2025 and spoke with Voytovych who provided her instructions on how the plaintiffs wanted her to proceed.[1] *Id*. at ¶ 14. Olson then sent her an email on June 2, 2025 to confirm the instructions and that she was following them. *Id*. at ¶ 14. Voytovych acknowledged the email and requested additional documentation. *Id*. at ¶ 15.

On June 4, 2025, Olson provided Voytovych with an update on what had happened, and asked her for further instructions. *Id*. at ¶ 16. Voytovych asked for additional documents that same day, and Olson provided them on June 9, 2025 with a request for further instructions. *Id*. at ¶¶ 17-18. Voytovych did not respond. *Id*. at ¶ 19.

Olson then asked for an update on her case on June 23, 2025. *Id*. at ¶ 20. Voytovych responded that same day to indicate that there had been some sort of progress on June 13, 2025, and she asked Olson for further documentation. *Id*. at ¶ 21. She also suggested that Olson repeat steps that Olson thought had been proving futile towards resolving her case. *Id*. at ¶ 21.

At that juncture, Olson believed that Voytovych did not understand what was happening with her case, and she was frustrated with the lack of communication between her and the plaintiffs, including when there was progress on her case that she was not informed about. *Id*. at ¶ 22. On June 23, 2025, Olson emailed Voytovych and Richo to express her concerns about the lack of understanding and communication, and she also

[1] Olson did not choose to become embroiled in this case. She has been hauled into a court far from home to defend against baseless and retaliatory allegations that she defamed the plaintiffs. She **DOES NOT** waive her attorney-client privilege pertaining to her Lemon Law claim. **Exhibit A, ¶ 6.**

asked for a meeting with Voytovych and the attorney handling her case so everyone could get on the same page. *Id*. at ¶ 23. She then sent a second email to Voytovych, Richo, and Plaintiff Sergei Lemberg on June 23, 2025 to reiterate her concerns and frustration about "being forced to chase down [her] legal team to get updates, guidance, and representation." *Id*. at ¶ 24.

Plaintiff Lemberg responded later that same day. *Id*. at ¶ 25. He claimed that Voytovych had been responding Olson's inquiries, confirmed that "we don't give automatic updates to people," and asked Olson to identify "[w]hat really is the issue today?" *Id*. at ¶ 25. He also offered to speak with Olson on June 24, 2025. *Id*. at ¶ 25.

Olson disputed Lemberg's inaccurate portrayal of reality. *Id*. at ¶ 26. She offered to send over a list of the phone calls and emails she had made, including the unanswered ones. *Id*. at ¶ 26. She also asked for clarification about whether she would only receive updates from the plaintiffs if she specifically requested them. *Id*. at ¶ 26. Olson also provided a detailed assessment of her case, and expressed concern as to how her case was being handled. *Id*. at ¶ 26.

Lemberg responded on June 24, 2025 by telling Olson that he had been doing this for 20 years and understood why clients like Olson are "pissed and angry." *Id*. at ¶ 27. He also confirmed the plaintiffs would "not provide 'automatic' or 'periodic' updates but respond to everyone within a reasonable time (sometimes one day, sometimes several." *Id*. at ¶ 27. He also stated that "[m]y philosophy is that I don't bother telling people that I have nothing material to tell them. When there is 'news' or something additional is needed, that's when clients get contacted by us." *Id*. at ¶ 27.

Olson explained later that day that she was not "pissed" and was not taking out frustration on Lemberg's staff simply by asking for communication without requiring multiple requests. *Id*. at ¶ 28. She also asked him to confirm that "if it was true that [she] would only get updates from him if [she] specifically asked for them." *Id*. at ¶ 28. She also asked for further guidance on how to proceed, and apologized if her questions gave the impression she was "pissed." *Id*. at ¶ 28.

Lemberg emailed back son June 24, 2025 to "confirm that [Olson] would only receive updates if I asked for them because '[t]hat's how it works now and how it has worked successfully since 2006.'" *Id*. at ¶ 29. Olson considered this response, particularly the answers to her questions on how to proceed, to be short and vague. *Id*. at ¶ 28.

Olson accepted Lemberg's invitation to ask him for updates and asked him on June 24, 2025 whether a response was sent to the other party in the lemon law case and asked what was sent. *Id*. at ¶ 30. His response later that day was: "Whatever they asked for. If there's additional information we will provide it or request from you." *Id*. at ¶ 31.

At approximately 11:36 PM on June 24, 2025, Olson read this response from Lemberg on her phone and replied from her phone using the Outlook mobile app. *Id*. at ¶ 32. She, however, did not realize that Outlook defaulted to using her work email address to respond.[2] *Id*. at ¶ 32. Olson's response was direct and flowed directly from her frustration with Lemberg's vague answers: "Please tell me exactly what FCA asked for and what exactly was the response from Lemberg Law." *Id*. at ¶ 34. She also explained that she would prefer to see the actual communication sent to the other party because of

[2] Outlook permits a user to view and use other email accounts, such as a Gmail account, through its mobile application. **Exhibit A, ¶ 5.**

her professional experience and to avoid miscommunication. *Id*. at ¶ 34. She also continued to ask him for further direction on anything she should do. *Id*. at ¶ 34. About 5 minutes later, she sent a second email asking Lemberg for an accounting so she could understand the work performed on her case. *Id*. at ¶ 35.

Lemberg emailed Olson back on June 25, 2025 to claim that she was misusing her official position and email to make threats, demands, or insinuations. *Id*. at ¶ 36. Nothing, however, in Olson's email implied or threatened official government action or consequences. *Id*. at ¶ 37. Moreover, she works for a non-profit, non-governmental organization in Arizona called the Arizona Association of Chiefs of Police, which manages the Arizona Law Enforcement Accreditation Program. *Id*. at ¶ 3. In other words, she had no official power to wield. Notwithstanding these facts, the plaintiffs terminated representation of Olson.

On June 25, 2025, Olson emailed Lemberg to explain what happened with her Outlook account and to confirm the termination of her representation. *Id*. at ¶ 38. She also explained that her frustration with the plaintiffs' representation is that they were more interested in discussing their experience and qualifications rather than the actual quality of their representation. *Id*. at ¶ 38.

Olson's experience with the plaintiffs left her with an extremely poor opinion of them and her treatment. *Id*. at ¶¶ 40-41. On or about June 26, 2025 and June 27, 2025, she left 1-star reviews for Lemberg Law on Google and Yelp that expressed her opinion on how she was treated. *Id*. at ¶ 42; *see also* Compl., ¶ 12. Olson's reviews were as follows:

> I retained Lemberg Law in early March for a lemon law claim. I was told to expect a response within 8-12 weeks. After 15 weeks without an update, I

> learned FCA had responded 10 days earlier, but I had not been informed. My follow-up requests for documentation were met with a notice of representation termination. During our communications, responses were inconsistent, and the firm stated they do not provide proactive updates. Based on my experience, I was dissatisfied with the level of communication and professionalism.

and:

> From the beginning, communication was poor and unprofessional. When I asked reasonable questions about my lemon law case, I was met with hostility and foul language. I was told, quite literally, that unless I reach out to them, I would not receive any updates.
>
> The attorney seems far more interested in boasting about his past clients and experience than actually working on my case. Despite repeated outreach on my part, there was zero initiative or effort shown. They even admitted that they do not proactively communicate with clients.
>
> This firm felt more like an assembly line than a professional legal service – no follow-through, no accountability, and no real results. I would not recommend wasting your time here.

Compl., ¶ 12.

II. Procedural History:

The plaintiffs filed this action on May 5, 2026. *See* Compl. The complaint bears a return date of May 12, 2026. Compl., p. 1. The undersigned appeared for Olson on May 13, 2026.

On June 8, 2026, the plaintiffs filed a motion for default for failure to plead. Dkt. 101.00. It alleges that more than thirty (30) days have elapsed from the return date and that Olson has failed to plead as required by Practice Book § 10-8. *Id*.

The plaintiffs' factual allegations are plainly inaccurate as 30 days from May 12, 2026 is June 11, 2026.

LEGAL STANDARD

Conn. Gen. Stat. § 52-196a "constitutes a special statutory benefit… that provides a moving party with the opportunity to have [a] lawsuit dismissed early in the proceeding and stays all discovery, pending the trial court's resolution of the special motion to dismiss." *Priore v. Haig*, 344 Conn. 636, 659 (2022) (cleaned up). "[A] special motion to dismiss filed pursuant to § 52-196a… is not a traditional motion to dismiss based on a jurisdictional ground. It is instead a truncated evidentiary procedure enacted by our legislature in order to achieve a legitimate policy objective, namely, to provide for a prompt remedy." *Mulvihill v. Spinnato*, 228 Conn. App. 781, 782-83 (2024) (cleaned up).

Conn. Gen. Stat. § 52-196a establishes a burden-shifting framework for special motions to dismiss. First, the moving party must make "an initial showing, by a preponderance of the evidence, that the opposing party's complaint… is based on the moving party's exercise of its right of free speech right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern…." Conn. Gen. Stat. § 52-196a(e)(3). Second, if the moving party makes this showing, the burden shifts to the opposing party to set "forth with particularity the circumstances giving rise to the complaint… and demonstrate[] to the court that that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint…." *Id*. For the court to grant the motion, "the court must resolve both prongs in favor of the moving party." *Aguilar v. Eick*, 234 Conn.App. 281, 287 n.6 (2025).

"When ruling on a special motion to dismiss, the court shall consider pleadings and supporting and opposing affidavits of the parties attesting to the facts upon which liability or a defense, as the case may be, is based." Conn. Gen. Stat. § 52-196a(e)(2).

ARGUMENT

I. Olson Makes An Initial Showing That The Claims Against Her Are Based On Her Exercise Of Her Free Speech Rights.

Olson brings this special motion to dismiss pursuant to Conn. Gen. Stat. § 52-196a under the free speech protections of the statute. She, therefore, must initially show that the plaintiffs' claims are based on her "exercise of [her] right of free speech… under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern." Conn. Gen. Stat. § 52-196a(e)(3). She easily makes the required initial showing.

A. Critical definitions:

Conn. Gen. Stat. § 52-196a contains a number of terms and definitions that are critical to a just disposition of Olson's special motion to dismiss. It also lacks statutory definitions for several critical terms that caselaw has fleshed out. Olson addresses each in turn.

1. "Right of free speech:"

Conn. Gen. Stat. § 52-196a(a)(2) defines, in relevant part, "right of free speech" as "(A) communicating, or conduct furthering communication, in a public forum on a matter of public concern."

Its other definitions – speech pertaining to the alleged commission of a crime or alleged discriminatory practices – are not applicable here.

2. "Matter of public concern:"

A "matter of public concern" is "an issue related to (A) health and safety, (B) environmental, economic or community well-being, (C) the government, zoning and other regulatory matters, (D) a public official or public figure, or (E) an audiovisual work." Conn. Gen. Stat. § 52-196a(a)(1).

3. "Public forum:"

Connecticut's anti-SLAPP statute does not define the meaning of the term "public forum" as used in Conn. Gen. Stat. § 52-196a(a)(2). *Pryor v. Brignole*, 346 Conn. 534, 542 (2023) ("the term 'public forum' is not defined"). Connecticut courts, however, have looked at the breadth of an audience for communications to determine whether statements were made in a public forum – a principle borrowed from California law. *See Sicignano v. Pearce*, 2023 WL 370988, at * 6 (Conn. Super. Ct. 2023) (noting that California precedent holds that "public access, not the right to public comment, is the hallmark of a public forum"); *see also K&W Enterprises, LLC v. Douglas*, 2023 WL 1097731 at *3 (Conn. Super. Ct. 2023) (noting reliance on California precedent).

"California courts have held that [w]eb sites accessible to the public… are public forums for purposes of the anti-SLAPP statute." *Hussain v. Quraishi*, 2026 WL 948918 at *4 (Conn. Super. Ct. Mar. 31, 2026) (quoting *Nygard, Inc. v. Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1039, 72 Cal. Rptr. 3d 210 (2008)) (cleaned up). "California courts analogized internet websites to an electronic public bulletin board 'open to literally billions of people all over the world.'" *Id*. (quoting *Choker v. Mateo*, 209 Cal. App. 4th 1138, 1146, 147 Cal. Rptr. 3d 496 (2012)) (cleaned up).

These principles have led Connecticut courts to consistently hold that postings on websites "for anyone in public to see" are made in public forums. *Id*. at *4 (finding Facebook posts to be in a public forum); *Holly Estates Development, LLC v. Provenzano*, 2025 WL 3145869 at *3 (Conn. Super. Ct. 2025) (finding customer reviews on Google and the Better Business Bureau to be in a public forum); *Mulvihill v. Spinnato*, 2022 WL 4008736, at *2 (Conn. Super. Ct. 2022) (finding a Zillow review is made in a public forum). Our Appellate Court did not disturb this analysis when it affirmed the judgment in *Mulvihill*. *See Mulvihill v. Spinnato*, 228 Conn. App. 781, 787 (2024).

4. "In Connection With:"

The phrase "in connection with" is construed broadly in Connecticut anti-SLAPP case law:

> [O]ur Supreme Court… explained that [t]he dictionary defines the word "connection" as, inter alia, a "causal or logical relation or sequence… contextual relation or association… [or] relationships in fact…." Accordingly, the plain meaning of the statutory phrase "in connection with" necessarily includes any factual, contextual or causal relationship.

Sicignano v. Pearce, 228 Conn. App. 664, 683 (2024) (cleaned up). Accordingly, showing that speech has "any factual, contextual or causal" relationship with a matter of public concern is not an onerous burden.

5. "Public Figure:"

Connecticut appellate courts have not addressed whether public facing companies are always necessarily limited public figures for purpose of comments on the goods or services. *See NetScout Systems, inc. v. Gartner, Inc.*, 334 Conn. 396, 414-16 and 429 n.18 (2020). Other courts have reached the issue though.

The Indiana Supreme Court concluded:

> Restaurants and other establishments that actively advertise and seek commercial patronage have been routinely held to be public figures, at least for the limited purpose of consumer reporting on their goods and services.

J. Gazette Co. v. Bandido's, Inc., 712 N.E.2d 446, 454 (Ind. 1999). The Nevada Supreme Court reached a similar conclusion in *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 721 (2002).

So too did the cases that the Indiana and Nevada Supreme Courts relied on. *See Steaks Unlimited, Inc. v. Deaner*, 623 F.2d 264, 272 (3d Cir. 1980), *Quantum Elec. v. Consumers Union of United States*, 881 F.Supp. 753, 764 (D.R.I. 1995); *S & W Seafoods Co. v. Jaco Broad. Of Atlanta*, 194 Ga.App. 233 (1989); *Greer v. Columbus Monthly Publ'g Corp.*, 4 Ohio App.3d 235 (1982); *Steak Bit of Westbury, Inc. v. Newsday, Inc.*, 70 Misc.2d 437, 334 N.Y.S.2d 325, 330 (Sup.Ct.1972); *Twenty–Five E. 40th St. Rest. Corp. v. Forbes, Inc.*, 37 A.D.2d 546, 322 N.Y.S.2d 408, 409 (1971); *El Meson Espanol v. NYM Corporation*, 389 F.Supp. 357, 358 (S.D.N.Y.1974) (concluding that a restaurant which serves food to the general public is engaged in an enterprise of public interest).

Moreover, the Supreme Court held in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974) that a person makes himself a limited purpose public figure when he voluntarily injects himself, or is thrust into, into a particular public controversy or public concern.

B. Olson's Speech Is A Proper Exercise Of Her First Amendment Rights.

At the outset, there can be little dispute that Olson's speech occurred in a public forum. Connecticut courts have repeatedly held that online reviews made for the world to see are made in a public forum. *Holly Estates Development, LLC v. Provenzano*, 2025 WL 3145869 at *3 (Conn. Super. Ct. 2025) (finding customer reviews on Google and the

Better Business Bureau to be in a public forum); *Mulvihill v. Spinnato*, 2022 WL 4008736, at *2 (Conn. Super. Ct. 2022) (finding a Zillow review is made in a public forum). The plaintiffs themselves alleged that Olson's reviews "were published to the general public on highly trafficked, widely accessible platforms (Yelp and Google)…." Compl., ¶ 13. Accordingly, there is no meaningful argument under Connecticut law that Olson's speech did not occur in a public forum.

Olson's speech is also on a matter of public concern. First, the very existence of websites like Google and Yelp that provide users with a forum to review businesses demonstrates that the public has taken an interest in the quality of services provided by public facing businesses. The Plaintiffs themselves acknowledge this, alleging that "[t]he Firm's Google and Yelp business listings are primary channels through which prospective clients evaluate and contact the Firm, and the star ratings and reviews posted to those listings directly influence client acquisition." Compl., ¶ 32. Yelp itself states that, as of December 31, 2025, it hosts over 330 million reviews.[3] Plaintiff Lemberg Law itself has received 52 reviews as of June 10, 2026, further demonstrating that the public has displayed an interest in the quality of the services it provides.[4] Likewise, Plaintiff Lemberg Law has 574 Google Reviews as of June 10, 2026, which also demonstrates that the public is interested in the quality of the services that it provides.[5] A glance at these reviews shows that Plaintiff Lemberg Law responds to its Google Reviews on a semi-regular

[3] https://www.yelp-press.com/company/fast-facts/default.aspx
[4] https://www.yelp.com/biz/lemberg-law-wilton?utm_campaign=www_business_share_popup&utm_medium=copy_link&utm_source=(direct)
[5] https://share.google/R4ATF0SNGIN7JVeUF

basis. In other words, reviews of Lemberg Law's services are an active public discussion with a range of numerous viewpoints.

Second, Olson's speech addresses an issue of "economic or community well-being" – indeed, the very issues that review platforms are designed to host public speech on. While Connecticut appellate courts have not defined the terms "economic or community well-being," the Appellate Court has acknowledged that they are extremely broad terms:

> [C]ommunity well-being" is not defined in our anti-SLAPP statute. It is a nebulous, broadly worded, and potentially far-reaching term. If the defendant here is correct that a real estate agent's conduct is a matter of community concern sufficient to preclude actions regarding defamatory statements, is the same not true for the conduct of other licensed professionals in the community, such as teachers, child car providers, or plumbers? Broadly construed, a matter of "community well-being" may pertain to the conduct of any business establishment that is open to the public.

Mulvihill v. Spinnato, 228 Conn. App. 781, 789 n.14 (2024). Connecticut trial courts have applied these terms to specific cases without establishing a comprehensive definition. For instance, in *Rockoff v. Annulli*, 2020 WL 4333864, at *2 (Conn. Super. Ct. 2020), the court held that "a claim of unethical and criminal behavior by a regulated professional" constitutes speech on a matter of public concern. *Id*.

More broadly, California courts have taken a broad view of whether postings on "consumer-oriented Web sites" are in the public interest. *Chaker v. Mateo*, 209 Cal.App.4th 1138, 1143 (2012). *Chaker* explained where the line is as established by California's leading case on the subject:

> "That the information provided here is in the nature of consumer protection information distinguishes this case from others recognizing that a publication does not become connected with an issue in the public interest simply because it is widely disseminated, or because it can be used as an

> example of bad practices or of how to combat bad practices. The statements made by Wolk were not simply a report of one broker's business practices, of interest only to that broker and to those who had been affected by those practices. Wolk's statements were a warning not to use plaintiffs' services. In the context of information ostensibly provided to aid consumers choosing among brokers, the statements, therefore, were directly connected to an issue of public concern."

Chaker, 209 Cal.App.4th at 1144-45 (quoting *Wilbanks v. Wolk*, 121 Cal.App.4th 883, 900 (2004)) (cleaned up). *Chaker* applied this principle to conclude that derogatory reviews about a forensics business "plainly [fell] within [] the rubric of consumer information" and "were intended to serve as a warning to consumers" about the operator's trustworthiness." *Id*. at 1146.

Olson's reviews plainly fall into this category under both the economic and community well-being terms. Her reviews conveying her experience are plain warnings not to use the plaintiffs' legal services. They are made in the broader context of 626 reviews about whether the plaintiffs could be trusted to handle legal matters properly for potential clients. In particular, they warned prospective consumers about the plaintiffs' communication and the nature of how their cases would be handled. Olson's speech regarding whether the plaintiffs' communication was adequate implicates professional misconduct under Connecticut Rule of Professional Conduct 1.4, which requires lawyers to keep clients reasonably informed about the status of their matters and to promptly comply with reasonable requests for information – something that the plaintiffs plainly did not do here. Olson's speech about their failure to live up to the requirements of Rule 1.4 plainly falls with the ambit of *Rockoff*, which encompasses speech on a licensed professional's unethical conduct. Accordingly, the Court should find that Olson's speech is on a matter of public concern.

Third, in the alternative, the plaintiffs are limited-purpose public figures. They are, at the very least, akin to the restaurants that were held to be limited-purpose public figures with respect to comments on the quality of their services in many jurisdictions across the United States. They have also voluntarily interjected themselves into the discussion of the quality of their services by maintaining listings on Yelp and Google and responding to reviews on Google, which they themselves acknowledged in their complaint. Compl., ¶ 32 ("Plaintiff Lemberg Law, LLC maintains existing and prospective business relationships with current and potential clients, referral sources, and the general public. The Firm's Google and Yelp business listings are primary channels through which prospective clients evaluate and contact the Firm…"). Thus, they are limited-purpose public figures for discussions on the quality of their services.

The bottom line to this entire discussion is that Olson's speech plainly falls within the protection of Conn. Gen. Stat. § 52-196a, and she has met her burden to demonstrate that. Accordingly, the Court should proceed to the second step, which is where the plaintiffs bear the burden of demonstrating probable cause of success.

II. The Plaintiffs Will Not Be Able To Show Probable Cause Of Success.

Even though it is the plaintiffs' burden to demonstrate probable cause of success, Olson submits that they will likely not carry that burden. She also reserves her right to further argument and to contest the plaintiffs' evidence.

A. Olson's reviews constitute non-falsifiable opinions.

"To be actionable, [a] statement… must convey an objective fact, as generally, a defendant cannot be held liable for expressing a mere opinion." *A Better Way Wholesale Autos, Inc. v. Better Business Bureau of Connecticut*, 221 Conn. App. 1, 18 (2023)

(cleaned up). “A statement can be defined as factual if it relates to an event or state of affairs that existed in the past or present and is capable of being known…. In a libel action, such statements of fact usually concern a person’s conduct or character.” *Id*. at 18 (cleaned up). On the other hand, an opinion “is a personal *comment* about another’s conduct, qualifications or character that has some basis in fact….” *Id*. at 18 (cleaned up).

Many cases, however, present questions of mixed statements of fact and opinion. Courts look to the context of the statements to determine whether they are statements of fact or opinion, and generally consult three basic factors: “(1) whether the circumstances in which the statement is made should cause the audience to expect an evaluative or objective meaning; (2) whether the nature and tenor of the actual language used by the declarant suggests a statement of evaluative opinion or objective fact; and (3) whether the statement is subject to objective verification.” *Id*. at 19. (cleaned up).

All of these factors favor Olson.

First, Olson made her statements on platforms specifically designed for consumers to share their *opinions* about their experience with businesses – a fact that the plaintiffs themselves acknowledge. Compl., ¶ 32. In particular, the plaintiffs directly allege that Lemberg Law’s Google and Yelp business listings “are primary channels through which prospective clients evaluate and contact the Firm, and the star ratings and reviews posted to those listings directly influence client acquisition.” *Id*. at ¶ 32. In other words, the plaintiffs have already conceded, by allegation, that audiences viewing reviews and ratings on their listings expect and use the “evaluative meaning” of those reviews.

Second, Olson’s language and the tone of her reviews clearly suggests evaluative statements of opinion. The first version of her reviews explains that, “during our

communications, responses were inconsistent…"and that she was "dissatisfied with the level of communication and professionalism." *Id*. at ¶ 12. The second version of her reviews explained that "communication was poor and unprofessional," that she asked "reasonable questions" about her case, that she "was met with hostility and foul language," that the "attorney seemed far more interested in boasting about his past clients and experience than actually working on my case," that "there was zero initiative or effort shown," and that "[t]his firm felt more like an assembly line than a professional legal service – no follow-through, no accountability, and no real results." *Id*. at ¶ 12. It closed by stating: "I would not recommend wasting your time here." *Id*. at ¶ 12. As Olson's affidavit indicates, she made her reviews to evaluate the extremely poor experience she had with them. **Exhibit A – Affidavit of Stacy Olson, ¶¶ 40-42.** In other words, any reasonable reader of Olson's reviews would have understood, from the language and tone of the reviews, that they were expressing her opinions.

Third, Olson's statements are not capable of objective verification.

In her first version of the reviews, Olson's perception of what constituted a substantive update is not readily verifiable. Olson retained the plaintiffs on or about March 5, 2025. **Exhibit A - Affidavit of Stacy Olson, ¶ 8 and accompanying exhibit citation.** Except for technical troubleshooting and an email instructing her to provide more documentation, Olson did not receive any substantive update on her case from March 5, 2025 until June 23, 2025 – a delay slightly in excess of 15 weeks. **Exhibit A, ¶¶ 8-21.** The June 23, 2025 update she received concerned progress that occurred on June 13, 2025 – 10 days before the update was actually sent. **Exhibit A, ¶ 21.** As Olson's affidavit demonstrates, she was not informed of the progress until 10 days later. *Id*. While the

plaintiffs may contest whether their technical troubleshooting constituted an update or when the clock started, that is not objectively verifiable, and reasonable minds could, at the very least, disagree on when it started.

Additionally, Olson's statements that responses were inconsistent, and that she was dissatisfied with the level of communication and professionalism are classic opinions that no one can objectively verify. What may be consistent or adequate communication and sufficient or adequate professionalism to one person may fall far short of those adjectives in another person's view. Accordingly, those statements are, without a doubt, statements of opinion.

In her second version of the reviews, Olson's statements are entirely statements of subjective opinion that cannot be objectively verified. She spoke about "poor and unprofessional" communication, stated that she asked reasonable questions about her case, was met with hostility and foul language, stated that the attorney seemed more interested in boasting than working on her case, stated that "zero initiative or effort" was shown to her, and stated that the firm "felt more like an assembly line than a professional legal service." Compl., ¶ 12. None of these statements are objectively verifiable because they are Olson's opinions about how she was treated.

Accordingly, the Court should find that all of Olson's speech constitutes statements of opinion and that the Plaintiffs cannot show probable cause of success on any of their claims.

B. To the extent that Olson's reviews contains factual statements, the plaintiffs do not allege with particularity which of Olson's factual statements they claim are false as required by Connecticut law.

Conn. Gen. Stat. § 52-196a(e)(3) requires that the plaintiffs set

> forth with particularity the circumstances giving rise to the complaint, counterclaim or cross claim and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint, counterclaim or cross claim.

The plaintiffs' complaint does not set forth, with particularity, the portions of Olson's statements that they allege are false – as part of the circumstances giving rise to the complaint. Instead, they make their allegations in broad terms:

- "After June 26, 2025, Defendant posted multiple 1-star Google reviews and a one-star Yelp review of Lemberg Law, both of which contained numerous false factual statements about Plaintiff's conduct and reputation as an attorney." Compl., ¶ 12.
- "When confronted, Defendant edited the reviews but each one, and all of them together, continue to defame and malign Plaintiff." Compl., ¶ 12.

To the extent the plaintiffs make more specific allegations, their allegations are contradicted by their own pleading and, much like their interactions with Olson, appear to be the product of their hoped-for reality instead of actual reality. For instance, the plaintiffs imply, in paragraph 14 of the complaint, that Olson accused them of lying, withholding evidence, and intentionally mishandling her case. Compl., ¶¶ 14, 21, 25, 29. Olson's reviews, however, do not contain any such allegations, but rather made their unprofessionalism and non-existent communication the subject of her reviews. Compl., ¶ 12. Likewise, the plaintiffs explicitly allege that Olson publicly stated that the plaintiffs "intentionally caused her to lose her case." Compl., ¶ 15. Olson's reviews, however, contain no such allegation or anything remotely resembling that kind of allegation. Compl., ¶ 12.

The plaintiffs are certainly entitled to their own opinions, but opinions are not a substitute for facts. The plaintiffs are not entitled to manipulate those facts to ones that bear no relationship to reality, and their allegations – broad and vague – border on frivolous. Accordingly, the plaintiffs must muster more specific allegations than those presented in their complaint to have any chance of surviving Olson's special motion to dismiss.

C. To the extent Olson's reviews contain factual statements, they are actually true.

Truth is an affirmative defense to defamation claims. *Gleason v. Smolinski*, 319 Conn. 394, 431 (2015); *see also Goodrich v. Waterbury Republican-American, Inc.*, 188 Conn. 107, 111 (1982) (holding that truth is an absolute defense to defamation). Moreover, "[i]t is not necessary for the defendant to prove the truth of every word of the libel. If he succeeds in proving that the main charge, or gist, of the libel is true, he need not justify statements or comments which do not add to the sting of the charge or introduce any matter by itself actionable." *Goodrich*, 188 Conn. at 113 (cleaned up).

In tortious interference with business relations claims, a plaintiff must prove "an intentional and improper interference with that relationship and a resulting loss of benefits of the relationship." *Holler v. Buckley Broadcasting Corp.*, 47 Conn. App. 764, 768-69 (1998). "A defendant is guilty of tortious interference if he has engaged in improper conduct." *Id*. at 769. Plaintiffs must plead and prove "*at least some improper motive or improper means.*" *Id*. at 769. Telling the truth about someone's conduct is not improper

under any sense of the term. Accordingly, truth is an affirmative defense to a tortious interference claim.[6]

Likewise, CUTPA requires a plaintiff to prove an unfair or deceptive trade practice. While the plaintiffs cannot prove that Olson's statements occurred in the course of her conducting any trade,[7] they must also prove a deception – a term that is naturally contradicted by truth – or an unfair practice, which is (1) a practice that offenses public policy as established by law or another established concept of fairness, (2) an immoral, unethical, oppressive, or unscrupulous practice, or (3) or whether it substantially injures consumers, competitors, or other businessmen. *Cheshire Mortgage Service, Inc. v. Montes*, 223 Conn. 80, 105-06 (1992). Telling the truth is not deceptive by definition. Nor is it against any public policy to tell the truth; it is actually public policy to encourage truth-telling. Nor is it considered unethical, oppressive, or unscrupulous to tell the truth. Lastly, the truth – to the extent that it makes the plaintiffs look bad – is a self-inflicted injury.

Olson's reviews, as portrayed in the complaint, really consist of two versions. To the extent that they contain factual statements and without conceding that any statements of opinion are factual, those factual statements are true. Accordingly, the plaintiffs have not demonstrated probable cause of success on any of their claims.

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[6] *See* Robert L. Tucker, "*And The Truth Shall Make You Free:" Truth As A First Amendment Defense In Tortious Interference With Contract Cases*, 24 Hasting Const. L.Q. 709, 718-720 (1997) (compiling 14 states that have held that truth is a defense to tortious interference claims).

[7] The plaintiffs' allegations on this score consist of their own hyper-sensitive opinions as to a one-time use of Olson's work email signature. Their complaint contains no factual allegations that would allow the Court to conclude that her constitutionally protected opinions were made as part of her trade.

1. **Version 1 (first three screenshots of Compl. ¶ 12):**

- **"*I retained Lemberg Law in early March for a lemon law claim*."**

This statement is actually true as shown by **Exhibit A - Affidavit of Stacy Olson, ¶ 8 and accompanying exhibit citation**.

- **"*I was told to expect a response within 8-12 weeks.*"**

This statement is actually true as shown by **Exhibit A – Affidavit of Stacy Olson, ¶ 8.**

- **"*After 15 weeks without an update, I learned FCA had responded 10 days earlier, but I had not been informed.*"**

This statement is actually true. Olson retained the plaintiffs on or about March 5, 2025. **Exhibit A - Affidavit of Stacy Olson, ¶ 8 and accompanying exhibit citation.** Except for technical troubleshooting and an email instructing her to provide more documentation, Olson did not receive any substantive update on her case from March 5, 2025 until June 23, 2025 – a delay slightly in excess of 15 weeks. **Exhibit A, ¶¶ 8-21.** The June 23, 2025 update she received concerned progress that occurred on June 13, 2025 – 10 days before the update was actually sent. **Exhibit A, ¶ 21.** As Olson's affidavit demonstrates, she was not informed of the progress until 10 days later. *Id*.

- **"*My follow-up requests for documentation were met with a notice of representation termination*."**

This statement is also actually true. Olson engaged in substantial email correspondence with the Defendants on June 23, 2025 in which she asked for documentation as to the progress of her case, including documents that the plaintiffs sent on her behalf as well as an accounting. **Exhibit A, ¶¶ 23-35.** She also did receive a notice of representation termination, which the plaintiffs confirmed to her. **Exhibit A, ¶¶ 38 and**

accompanying exhibit citation. This termination came in direct response to Olson not playing ball with the plaintiffs' expectations of what communication and documentation, or lack thereof, she should be happy with.

- **"*During our communications, responses were inconsistent, and the firm stated they do not provide proactive updates.*"**

This statement is also actually true. Olson went more than 6 weeks without any form of responsive communication from the plaintiffs. **Exhibit A, ¶¶ 11-12.** When she reached out to the plaintiffs, she was forced to follow up multiple times over the course of two weeks to finally elicit a response. *Id*. at ¶¶ 13-14. A second instance of this inconsistent communication occurred when she finally received a response and asked for further direction. *Id*. at ¶ 18. Olson went two weeks without a response. *Id*. at ¶¶ 19-21. In other words, by any reasonable definition of the term "inconsistent," the plaintiffs' communication with Olson was inconsistent.

With respect to the statement that the plaintiffs confirmed that they did not provide proactive updates, the plaintiffs themselves confirmed that to Olson at least twice. *Id*. at ¶¶ 25-29 and accompanying exhibits.

2. Version 2 (last screenshot of Compl. ¶ 12):

- **"*From the beginning, communication was poor and unprofessional.*"**

This statement is a clear statement of opinion, but it is also factually true. The plaintiffs took a month to access Olson's documents in emails spread out over weeks. **Exhibit A, ¶¶ 8-10.** Communication then dried up entirely. *Id*. at ¶ 11. Then Olson had to chase the plaintiffs several times to get any response. *Id*. at ¶¶ 12-21. These are the hallmarks of poor communication that is also unprofessional.

- **"*When I asked reasonable questions about my lemon law case, I was met with hostility and foul language.*"**

This statement is a statement of opinion, but it is also factually true. Olson repeatedly asked for guidance on what she should do next in her case. **Exhibit A, ¶¶ 12, 16, 18.** She was ignored. When she spoke over the phone with Plaintiff Sergei Lemberg, he told her that he had "enough of this shit" or "bullshit," which she understood to refer to her requests for information and persistence in getting more details from his firm about the case. *Id*. at ¶ 39.

Additionally, Plaintiff Lemberg did respond hostilely to Olson when she asked for more details on the work that he was performing. Instead of providing the information requested, Lemberg extrapolated Olson's email signature into an allegation that she was misusing an official government position that she did not even hold and accused her of threatening him and insinuating things. *Id*. at ¶ 36. This hostility came after Lemberg tried to nudge Olson into conforming to what he thought was reasonable client behavior instead of recognizing that she was behaving reasonably. *Id*. at ¶¶ 24-36.

- **"*I was told, quite literally, that unless I reach out to them, I would not receive any updates.*"**

This statement is factually true. The plaintiffs themselves confirmed that to Olson at least twice. **Exhibit A, ¶¶ 25-29 and accompanying exhibits.**

- **"*The attorney seemed far more interested in boasting about his past clients and experience than actually working on my case.*"**

This statement is also true. Plaintiff Sergei Lemberg specifically cited his length of practice to Olson on several occasions when she requested improvements to customer service and documentation of the work being performed for her. **Exhibit A, ¶¶ 27, 29.** When Olson persisted and he manufactured a reason to terminate her as a client, he

claimed to have represented "judges, politicians, police officers and CEOs." *Id*. at ¶ 36. When Olson requested specific information about her case, he provided vague answers. *Id*. at ¶¶ 30-31.

- **"*Despite repeated outreach on my part, there was zero initiative or effort shown.*"**

This is a statement of opinion, but it is also factually true. The plaintiffs took a month to access Olson's documents in emails spread out over weeks. **Exhibit A, ¶¶ 8-10.** Communication then dried up entirely. *Id*. at ¶ 11. Then Olson had to chase the plaintiffs several times to get any response. *Id*. at ¶¶ 12-21. This represents a clear lack of initiative and effort being shown to Olson.

- **"*They even admitted that they do not proactively communicate with clients.*"**

This statement is factually true. The plaintiffs themselves confirmed that to Olson at least twice. **Exhibit A, ¶¶ 25-29 and accompanying exhibits.**

- **"*This firm felt more like an assembly line than a professional legal service – no follow-through, no accountability, and no real results.*"**

This statement is a clear statement of opinion, but it also is factually true. As Olson's whole affidavit demonstrates, the plaintiffs exhibited poor communication, resisted her attempts to obtain information, did not proactively update her in any regard, did not deliver any results, and tried to obstruct her from obtain any information to push for results.

D. The plaintiffs cannot demonstrate actual malice.

Because the plaintiffs are limited-purpose public figures, they must show that Olson spoke with actual malice. *Gleason v. Smolinski*, 319 Conn. 394, 431 (2015).

"[A]ctual malice requires a showing that a statement was made with knowledge that it was false or with reckless disregard for its truth.... A negligent misstatement of fact will not suffice; the evidence must demonstrate a purposeful avoidance of the truth." *Crismale v. Walston*, 184 Conn. App. 1, 11 (2018) (cleaned up). The plaintiffs fall far short of meeting that standard in their complaint and fail to plead sufficient facts to support actual malice as to any specific fact.

First, as already discussed, the plaintiffs do not allege exactly which of Olson's statements are false – much less how she knew of the falsity of any particular statement. At best, they vaguely reference unidentified documents and a communication record without elaboration. Compl., ¶¶ 14, 26, 39. To use a horse racing analogy, these allegations do not even get out of the barn to the starting gate, let alone to the finish line. They contain nothing that would allow the Court to conclude that Olson knew her statements were false or made them in reckless disregard for the truth.

Second, the lack of specific allegations and what essentially is a bald recitation of the elements of actual malice does not constitute a showing of probable cause. As the Court noted in *Primrose Companies, Inc. v. McGee*, 2022 WL 3712636, at *12 (Conn. Super. Ct. 2022) (cleaned up), plaintiffs must prove actual malice by "convincing clarity," or a substantially greater "probability that the facts asserted are true or exist… than the probability that they are false or do not exist." "Clear and convincing proof is highly probable and leaves no substantial doubt." *Id*. at 12 (cleaned up).

The plaintiffs' allegations and Olson's affidavit leave overwhelming doubt that the plaintiffs can meet this burden. As Olson's affidavit indicates, the documents and communication record demonstrate that her statements were well-grounded in the email

correspondence and experience that she had with the plaintiffs. Nothing in that email record fairly apprises her that her statements are false, and they would lead a reasonable person to the exact same conclusions that Olson reached and expressed in her reviews. Accordingly, the plaintiffs cannot surpass the probable cause standard.

E. Olson's reviews are inactionable speech on a matter of public concern.

The First Amendment circumscribes state tort liability for speech on matters of public concern:

> [W]hether the [f]irst [a]mendment prohibits holding [a defendant] liable for its speech . . . turns largely on whether that speech is of public or private concern, as determined by all the circumstances of the case. [S]peech on matters of public concern . . . is at the heart of the [f]irst [a]mendment's protection.... The [f]irst [a]mendment reflects a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open….

Gleason, 319 Conn. at 411.

As Olson has set forth above, her speech was part of a broader, ongoing public discussion on an issue of public concern. The plaintiffs – so-called champions of consumers – are now seeking to leverage the machinery of government to silence her viewpoint simply because it offends them and does not conform to their preferred narrative. Olson's contribution to the public discourse, however, is not actionable under any of the torts that the plaintiffs allege. *See Snyder v. Phelps*, 562 U.S. 443 (2011) (applying the First Amendment to an intentional infliction of emotional distress claim). Accordingly, the Court should decline to silence Olson's contribution to the public discourse, and find that the plaintiffs have not demonstrated probable cause to proceed.

CONCLUSION

For the foregoing reasons, Olson respectfully asks the Court to grant her special motion to dismiss pursuant to Conn. Gen. Stat. § 52-196a. She also asks the Court to stay any discovery in this action pursuant to Conn. Gen. Stat. § 52-196a(d). She also asks the Court, pursuant to Conn. Gen. 52-196a(f)(1), to award her costs and attorneys' fees in the amount to be supported by affidavit after the Court rules on her motion.

The Defendant, Stacy Olson

By: /s/ Cameron L. Atkinson /s/
Cameron L. Atkinson (442289)
ATKINSON LAW, LLC (443770)
122 Litchfield Rd, Ste. 2
P.O. Box 340
Harwinton, CT 06791
Tel: 203-677-0782
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catkinson@atkinsonlawfirm.com

CERTIFICATION OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on the foregoing date upon the following parties/counsel of record:

Sergei Lemberg
Lemberg Law, LLC
43 Danbury Rd., 3rd Floor
Wilton, CT 06897
slemberg@lemberglaw.com

/s/ Cameron L. Atkinson /s/

Exhibit A

FST-CV26-6080753-S	:	**SUPERIOR COURT**
	:	**Stamford J.D.**
SERGEI LEMBERG; LEMBERG LAW, LLC	:	**At Stamford**
v.	:	
STACY OLSON	:	

AFFIDAVIT OF STACY OLSON

Stacy Olson, having been duly sworn, hereby states as follows:

1. I am over the age of 18.

2. I am a Prescott Valley, Arizona resident.

3. I work for a non-profit, non-governmental organization called the Arizona Association of Chiefs of Police that manages the Arizona Law Enforcement Accreditation Program.

4. In March 2025, I retained Lemberg Law LLC and Sergei Lemberg to represent me with respect to a Lemon Law claim pertaining to a 2023 Dodge Charger.

5. Most of my communication with Lemberg Law occurred from my Gmail account, which I also can, and regularly do, access through my phone using the Outlook mobile app so all of my emails are in one mobile app.[1]

6. I have partially redacted the emails included as exhibits to this affidavit to protect my attorney-client privilege pertaining to my lemon law claim, which I do not waive.

7. The copies of the emails attached in **Exhibits A** and **B** to this affidavit are true and accurate copies of these emails.

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[1] https://support.microsoft.com/en-us/office/add-a-gmail-account-to-outlook-for-windows-70191667-9c52-4581-990e-e30318c2c081

8. My intake was handled by Luca Richo, a client coordinator, beginning on March 5, 2025. Richo told me that I could expect a response within 8-12 weeks of my case being accepted by Lemberg Law. On March 10, 2025, a paralegal, Yana Kholevchuk, emailed me to request documents and to inform me that another paralegal, Olga Voytovych, was assigned to my case and that I should direct all future correspondence and documents to her. **Exhibit A, pp. 21-23.**

9. On March 12, 2025, I emailed Kholevchuk a link to my case documentation. **Exhibit A, p. 21.**

10. After some initial technical difficulties, Kholevchuk confirmed that she could access my case files on April 4, 2025 at 6:23 AM. **Exhibit A, pp. 19-21.**

11. From April 4, 2025 to May 22, 2025, I did not hear anything from Lemberg Law.

12. On May 22, 2025, I emailed Kholevchuk and Richo asking for an update on my case as well as guidance on how I should proceed on a number of levels. **Exhibit A, pp. 18-19.**

13. I then forwarded this email to Voytovych on May 28, 2025 at 12:06 PM after I called Lemberg Law and Luca Richo instructed me to contact Voytovych for updates. **Exhibit A, p. 18.**

14. After I did not receive any further response, I called Lemberg Law on June 2, 2025 and spoke with Voytovych who provided me instructions on how Lemberg Law wanted me to proceed. I subsequently sent her an email on June 2, 2025 at 11:56 AM confirming that I was following those instructions. **Exhibit A, p. 17.**

15. Voytovych acknowledged receipt of the email on June 2, 2025 at 9:12 AM[2] and requested additional documentation after I obtained it. **Exhibit A, pp. 16-17.**

16. On June 4, 2025 at 3:09 PM, I provided Voytovych an update on how I had followed her instructions, told her what I was going to do, and asked her for further instructions. **Exhibit A, p. 16.**

17. Voytovych responded on June 4, 2025 at 12:20 PM asking for additional documentation. **Exhibit A, pp. 15-16.**

18. On June 9, 2025 at 12:55 PM, I provided the documentation to Voytovych by email and asked for further directions. **Exhibit A, p. 15.**

19. Voytovych did not respond to my email at all.

20. I then followed up by email asking for an update on June 23, 2025 at 3:06 PM. **Exhibit A, p. 14.**

21. On June 23, 2025 at 2:57 PM, Voytovych responded to tell me that there had been some sort of progress on June 13, 2025. She asked me if I had any more documentation and suggested that I repeat the steps that I thought had been proving futile towards resolving my case. **Exhibit A, p. 14.**

22. I did not believe that Voytovych understood what was happening with my case. I was also frustrated with the lack of communication, including when there was progress and I was not told about it.

---

[2] The times shown on the emails in Exhibit A appear in more than one time zone. I am in Arizona (Mountain Standard Time, UTC−7); Lemberg Law is in Connecticut (Eastern Daylight Time, UTC−4), three hours ahead. Depending on which email program generated each quoted header, a message may display the sender's or the recipient's local time. As a result some timestamps appear out of sequence, though the events occurred in the order described in this affidavit.

23. On June 23, 2025 at 3:16 PM, I emailed her and Luca Richo to convey my concerns about the lack of understanding and communication, and I also asked for a meeting with her and the attorney handling my case so we could get on the same page. I was clear that I was upset at how my case was being handled. **Exhibit A, p. 13.**

24. I then emailed Sergei Lemberg, Voytovych, and Richo on June 23, 2025 at 6:30 PM to express my concerns about the lack of communication and updates about the case. I further expressed my frustration about being forced to chase down my legal team to get updates, guidance, and representation. **Exhibit A, pp. 11-12.**

25. Lemberg responded on June 23, 2025 at 3:55 PM. He claimed that Voytovych had been responding to my inquiries, confirmed that "we don't give automatic updates to people," and asked me to identify "[w]hat really is the issue today?" He offered to speak with me on June 24, 2025. **Exhibit A, p. 11.**

26. I responded on June 23, 2025 at 7:34 PM by asking if it would be helpful if I sent over a list of the phone calls and emails I made, including the ones that went unanswered. I also asked for clarification about whether "I will only receive updates from Lemberg Law if I specifically request them?" I also provided my detailed assessment of my case, and politely expressed my frustration and concern with how my case was being handled. **Exhibit A, pp. 9-11.**

27. Lemberg responded to me by email on June 24, 2025 at 7:47 AM. He stated that he had been doing this for 20 years so he understood that clients like me are "pissed and angry." He also confirmed that his staff "will not provide 'automatic' or 'periodic' updates but respond to everyone within a reasonable time (sometimes one day, sometimes several." He also stated that: "[m]y philosophy is that I don't bother telling

people that I have nothing material to tell them. When there is 'news' or something additional is needed, that's when clients get contacted by us." **Exhibit A, pp. 7-9.**

28. I responded on June 24, 2025 at 11:31 AM. I explained to Lemberg that I was not "pissed" and "certainly" was not taking out frustration on his staff simply by asking for communication without requiring multiple requests. I also asked if it was true that I would only get updates from him if I specifically asked for them. I asked for further guidance on what I needed to do to proceed. I then closed by apologizing if Lemberg felt "my questions equated to that emotion" of being "pissed." **Exhibit A, pp. 6-7.**

29. Lemberg responded to my earlier email at 11:17 AM on June 24, 2025 to confirm that I would only receive updates if I asked for them because "[t]hat's how it works now and how it has worked successfully since 2006." He provided what I thought were short and vague answers to my questions on how to proceed. **Exhibit A, pp. 5-7.**

30. I then asked Lemberg on June 24, 2025 at 5:10 PM[3] whether a response was sent to the other party in the lemon law case and asked what was sent. **Exhibit A, p. 5.**

31. He responded on June 24, 2025 at 2:18 PM: "Whatever they asked for. If there's additional information we will provide it or request from you." **Exhibit A, pp. 4-5.**

32. At approximately 11:36 PM on June 24, 2025, I read this response from Lemberg on my phone and replied from my phone using the Outlook mobile app. **Exhibit**

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[3] The times shown on the emails in Exhibit A appear in more than one time zone. I am in Arizona (Mountain Standard Time, UTC−7); Lemberg Law is in Connecticut (Eastern Daylight Time, UTC−4), three hours ahead. Depending on which email program generated each quoted header, a message may display the sender's or the recipient's local time. As a result some timestamps appear out of sequence, though the events occurred in the order described in this affidavit.

A, p. 4. I did not realize that Outlook defaulted to using my work email address, stacyolson@azchiefsofpolice.org, to respond. If I had realized that, I would have corrected it.

33. At no point did my technologically-mistaken email constitute any act as part of my employment, and I have no official government authority to wield even within the scope of my employment.

34. In this response, I asked Lemberg "Please tell me exactly what FCA asked for and what exactly was the response from Lemberg Law" because I was not happy with his vague and dismissive answers. I explained that I would prefer to see the actual communication to avoid miscommunication and because of my professional experience, "I greatly prefer seeing actual documentation." I also asked if there was anything else he wanted me to do. **Exhibit A, p. 4**.

35. On June 24, 2025 at 11:41 PM, I also asked Lemberg for an accounting so I could understand the scope of work performed on my case. **Exhibit B, p. 2**

36. Lemberg emailed me back on June 25, 2025 at 1:13 PM, claiming that he has represented "judges, politicians, police officers and CEOs." He accused me of misusing my official position and email account, and claimed that it was "highly inappropriate and, frankly, offensive." He accused me of "making threats, demands or insinuations..." **Exhibit A, p. 3.**

37. Nothing in my email implied or threatened official government action or consequences.

38. I responded on June 25, 2025 at 2:52 PM by plainly communicating my opinion of his representation and confirming that our relationship was terminated. I

explained "that with each response, I receive from you I get yet another list of years as an attorney, individuals you've represented, or additional references to your qualifications." I also explained that I was "far more interested in the actual quality of representation provided in my case." I also explained what had happened with the Outlook account. **Exhibit A, pp. 2-3.**

39. To the best of my recollection, on a phone call at some point before June 26, 2025, Sergei Lemberg told me that he had "enough of this shit" or "bullshit." I understood him to be referring to my requests for information and persistence in getting more details from his firm about the case.

40. My experience with Lemberg and his firm left with me with an extremely poor opinion of them and the treatment that I received.

41. My opinions were based on my personal experiences and perceptions of my treatment by Lemberg and his firm, which I communicated to them many times.

42. I left 1-star reviews for Lemberg Law on Google and Yelp on or about June 26, 2025 and June 27, 2025 that expressed my opinion on how I was treated.

43. I believe that any statements of fact, to the extent that they are statements are fact, that I made in any reviews I left were true and accurate, and I have no reason to know or believe that they are not.

I hereby affirm that the foregoing is true and accurate to the best of my knowledge under penalty of perjury.

Stacy Olson

Stacy Olson

Subscribed and sworn before me on June 10th, 2026 in Prescott valley, AZ, 86314

XENALYNN PANUI-HATORI
Notary Public - Yavapai County
Commission No. 652291
My Commission Expires
June 19, 2027

Notary Public

Exhibit A

Exhibit A

From: stacyolson.mb@gmail.com
To: "Sergei Lemberg"
Subject: RE: 36972-001 : Olson v. FCA | [redacted]
Date: Wednesday, June 25, 2025 2:52:49 PM
Importance: High

Thank you again for your resume. It seems that with each response, I receive from you I get yet another list of years as an attorney, individuals you've represented, or additional references to your qualifications. At this point, I am far more interested in the actual quality of representation provided in my case.

To clarify, there was absolutely no threat or insinuation in my previous message. The email was sent from my phone late last night, and Outlook **automatically selected the account it uses most frequently—unfortunately, my work email**. That account includes a preset signature line, and I sincerely apologize for any confusion or offense that may have caused. **However, that automated signature should not have warranted the tone or assumptions in your reply.**

What is far more concerning is the ongoing lack of professionalism, the dismissiveness, and the foul language I've experienced throughout this process. I am relieved to have received confirmation from Trinette that I've been released as a client. I've never encountered a legal team so consistently discourteous, disorganized, and unprofessional.

Now that representation has formally ended, I expect my full client file to be turned over immediately. Under **Arizona's Rules of Professional Conduct (ER 1.16(d))** and binding ethics opinions from the Arizona Supreme Court, attorneys are required to promptly return the *entire client file* upon termination of representation. This includes all documents, communications, privileged materials, and confidential records—drafts, emails, settlement agreements, and any other case-related information.

Arizona does not recognize any exception that would allow you to withhold part of my file. If the complete case file is not provided within a reasonable timeframe, I will not hesitate to file a complaint with the State Bar.

I look forward to completing the end of this relationship upon file receipt.

Kind Regards,

Stacy Olson

Stacy Olson

Phone: (928) 925-8282
Email: stacyolson.mb@gmail.com
3860 N. Constance Drive, Prescott Valley, AZ 86314

From: Sergei Lemberg <slemberg@lemberglaw.com>
Sent: Wednesday, June 25, 2025 1:13 PM
To: Stacy Olson <stacyolson@azchiefsofpolice.org>
Cc: Olga Voytovych <ovoytovych@lemberglaw.com>; Trinette Kent <tkent@lemberglaw.com>
Subject: Re: 36972-001 : Olson v. FCA | [redacted]

I've represented judges, politicians, police officers and CEOs.

I've never had anyone misuse their official position or email account in this fashion. It's highly inappropriate and, frankly, offensive. This case isn't part of your employer's official business and you should not be making threats, demands demand or insinuations of this sort.

Best Regards,
Sergei Lemberg

Sergei Lemberg, Esq., Managing Partner (Licensed in MA, CT, NY, GA, NJ, PA, FL & MI)
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From: Stacy Olson <stacyolson@azchiefsofpolice.org>
Date: Tuesday, June 24, 2025 at 11:36 PM
To: Sergei Lemberg <slemberg@lemberglaw.com>
Cc: Olga Voytovych <ovoytovych@lemberglaw.com>, Trinette Kent <tkent@lemberglaw.com>
Subject: Re: 36972-001 : Olson v. FCA | [redacted]

Please tell me exactly what FCA asked for and what exactly was the response from Lemberg Law.

If it's easier for someone to send me a copy of the communications both ways, feel free to do that, less chance of any miscommunication. And I greatly prefer seeing actual documentation given my line of work.

[redacted], what more would you like me to do?

Stacy Olson
(928) 925-8282
Arizona Law Enforcement Accreditation Program
www.azleap.org

> On Jun 24, 2025, at 2:18 PM, Sergei Lemberg <slemberg@lemberglaw.com> wrote:

Whatever they asked for. If there's additional information we will provide it or request from you.

- Sergei Lemberg

From: stacyolson.mb@gmail.com <stacyolson.mb@gmail.com>
Sent: Tuesday, June 24, 2025 5:10 PM
To: Sergei Lemberg <slemberg@lemberglaw.com>
Cc: Olga Voytovych <ovoytovych@lemberglaw.com>; Luca Richo <LRicho@lemberglaw.com>; Trinette Kent <tkent@lemberglaw.com>
Subject: RE: 36972-001 : Olson v. FCA | [redacted]

Has a response been sent to FCA after they responded on 6/13/2025? If so, what was sent?

Kind Regards,

Stacy Olson

Stacy Olson

Phone: (928) 925-8282
Email: stacyolson.mb@gmail.com
3860 N. Constance Drive, Prescott Valley, AZ 86314

<image001.jpg>

<image002.jpg>

From: Sergei Lemberg <slemberg@lemberglaw.com>
Sent: Tuesday, June 24, 2025 11:17 AM
To: stacyolson.mb@gmail.com
Cc: Olga Voytovych <ovoytovych@lemberglaw.com>; Luca Richo <LRicho@lemberglaw.com>; Trinette Kent <tkent@lemberglaw.com>
Subject: RE: 36972-001 : Olson v. FCA | [redacted]

See below…

Sergei Lemberg, Esq., Managing Partner (Licensed in MA, CT, NY, GA, NJ, PA, FL & MI)
Lemberg Law LLC
43 Danbury Road | Wilton | CT | 06897
Mobile 203.493.1833 | Office 203.653.2250 x5500 | Fax. 203.653.3424
www.LembergLaw.com
* Also licensed in the following Federal Courts: the United States Supreme Court, Federal Courts of Appeal: First, Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth and Eleventh Circuits.
Northern District of Ohio, District of Maryland, Eastern and Western Districts of Michigan, Districts of Illinois, District of Arkansas, Eastern District of Missouri, Western District of Texas, All Districts of Oklahoma and Nebraska, Middle District of Tennessee

---

From: stacyolson.mb@gmail.com <stacyolson.mb@gmail.com>
Sent: Tuesday, June 24, 2025 11:31 AM
To: Sergei Lemberg <slemberg@lemberglaw.com>
Cc: Olga Voytovych <ovoytovych@lemberglaw.com>; Luca Richo <LRicho@lemberglaw.com>; Trinette Kent <tkent@lemberglaw.com>
Subject: RE: 36972-001 : Olson v. FCA | [redacted]
Importance: High

Please let me clarify, I'm not "pissed" and I've certainly not "taken out frustrations" simply asked for communication without requiring multiple requests. I've sent very few requests, so my ask for a response has been minimal. Disappointed would more accurately describe how I'm feeling. I know this process is lengthy, as I've been dealing with this for over a year.

1. You stated, "we don't give automatic updates to people" – *Is it correct that I will **only** receive updates from Lemberg Law if I specifically request them?* Yes. That's how it works now and how it has worked successfully since 2006.
    1. For example, FCA responded on June 13, 2025, but I only learned of this yesterday—ten days later—after repeated phone calls and emails seeking guidance on how to proceed with repairs.

[redacted]

[redacted]

If these questions can be answered, I'll know how to proceed on my end. I'm sorry if other clients have been "pissed" – but that's not the case with me and I'm sorry you feel my questions equated to that emotion. I only ask for a timely response and guidance in your area of expertise.

Kind Regards,

Stacy Olson

Stacy Olson

Phone: (928) 925-8282
Email: stacyolson.mb@gmail.com
3860 N. Constance Drive, Prescott Valley, AZ 86314

<image001.jpg>

<image002.jpg>

From: Sergei Lemberg <slemberg@lemberglaw.com>
Sent: Tuesday, June 24, 2025 7:47 AM
To: stacyolson.mb@gmail.com
Cc: Olga Voytovych <ovoytovych@lemberglaw.com>; Luca Richo

<LRicho@lemberglaw.com>; Trinette Kent <tkent@lemberglaw.com>
Subject: Re: 36972-001 : Olson v. FCA | [redacted]

Stacy, you're in the same boat as many of our clients. By the time they get to us, they are pissed and angry. I've been doing this for 20 years so I know.

Some fraction of our clients, when they contact us, expect a version of magic. They think that getting a lawyer involved immediately resolves their issue and the manufacturer pays their money back pronto.

What we do is a version of magic but it's not instantaneous. Because we've been suing car manufacturers for 20 years, when we send demand letters to them they respond. And in meritorious cases (where facts and law warrant) they either buy back cars or settle out for cash.

But it does take time. .....sometimes a couple of months. Sometimes half a year. It depends. It is all faster than the alternatives, which is litigation, which takes years, sometimes many.

So I urge you to be patient and please don't take your continued frustration with your car and FCA's failure to fix it on Olga and staff. They work very hard. They will not provide 'automatic' or 'periodic' updates but respond to everyone within a reasonable time (sometimes one day, sometimes several). My philosophy is that I don't bother telling people that I have nothing material to tell them. When there is 'news' or something additional is needed, that's when clients get contacted by us.

Feel free to call if you'd like more explanation.

Best Regards,
Sergei Lemberg

_____
Sergei Lemberg, Esq., Managing Partner (Licensed in MA, CT, NY, GA, NJ, PA, FL & MI)
Lemberg Law LLC
43 Danbury Road | Wilton | CT | 06897
Mobile 203.493.1833 | Office 203.653.2250 x5500 | Fax. 203.653.3424
www.LembergLaw.com
* Also licensed in the following Federal Courts: the United States Supreme Court, Federal Courts of Appeal: First, Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth and Eleventh Circuits.
Northern District of Ohio, District of Maryland, Eastern and Western Districts of Michigan, Districts of Illinois, District of Arkansas, Eastern District of Missouri, Western

District of Texas, All Districts of Oklahoma and Nebraska, Middle District of Tennessee

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From: stacyolson.mb@gmail.com <stacyolson.mb@gmail.com>
Date: Monday, June 23, 2025 at 7:34 PM
To: Sergei Lemberg <slemberg@lemberglaw.com>, Sergei Lemberg <slemberg@lemberglaw.com>
Cc: Olga Voytovych <ovoytovych@lemberglaw.com>, Luca Richo <LRicho@lemberglaw.com>
Subject: RE: 36972-001 : Olson v. FCA | [redacted]
Thank you for your quick response.

Please let me know if it would be helpful for me to send over a list of the phone calls and emails I've made requesting updates on this case—many of which went unanswered. I'm happy to provide that documentation if needed.

I do want to clarify one important point: Is it correct that I will only receive updates from Lemberg Law if I specifically request them? For example, FCA responded on June 13, 2025, but I only learned of this today—ten days later—after repeated phone calls and emails seeking guidance on how to [redacted]. Am I understanding the communication process accurately?

In response to my inquiry, Olga sent the following message **earlier today**:

[redacted]

[redacted]

[redacted]

- [redacted]
- [redacted]

[redacted]

I appreciate your continued efforts, but we're growing increasingly frustrated and concerned. Please advise on next steps and let me know how we can ensure that this issue is documented and addressed properly moving forward.

Kind Regards,

Stacy Olson

Stacy Olson

Phone: (928) 925-8282
Email: stacyolson.mb@gmail.com
3860 N. Constance Drive, Prescott Valley, AZ 86314

<image001.jpg>

<image002.jpg>

From: Sergei Lemberg <slemberg@lemberglaw.com>
Sent: Monday, June 23, 2025 3:55 PM
To: stacyolson.mb@gmail.com
Cc: Olga Voytovych <ovoytovych@lemberglaw.com>; Luca Richo <LRicho@lemberglaw.com>
Subject: Re: 36972-001 : Olson v. FCA | [redacted]

Stacy, sorry to hear about your problems. I'm looking in the system and it seems like Olga has been responding to your inquiries. I want you to understand that we respond to inquiries, but we don't give automatic updates to people. Also, over the course of time I know that people are super frustrated with their cars and once in a while, take out the frustration on us. What really is the issue today? It seems to me that FCA has acknowledged our demand and they will respond and due course.

This is frustrating, I know, but please be assure that this is the best course of action and nothing else is really faster than what we're doing. Happy to speak with you tomorrow just give me a holler.

- Sergei Lemberg

From: stacyolson.mb@gmail.com <stacyolson.mb@gmail.com>
Sent: Monday, June 23, 2025 6:30:48 PM
To: Sergei Lemberg <slemberg@lemberglaw.com>
Cc: Olga Voytovych <ovoytovych@lemberglaw.com>; Luca Richo <LRicho@lemberglaw.com>
Subject: FW: 36972-001 : Olson v. FCA | [redacted]

Dear Mr. Lemberg,

I'm reaching out because I'm extremely concerned about the lack of communication and progress on our case. I've had to initiate every update myself, and if I hadn't followed up with Olga again, I would not have known that FCA responded over 10 days ago.

[redacted]

[redacted]

We need meaningful legal support and someone who will actively advocate on our behalf. When we retained Lemberg Law, we expected strong representation and a team who would push for resolution—not a situation where we're constantly chasing down answers.

Please let me know how we can move this forward. We need help.

Kind Regards,

Stacy Olson

Stacy Olson

Phone: (928) 925-8282
Email: stacyolson.mb@gmail.com
3860 N. Constance Drive, Prescott Valley, AZ 86314

From: stacyolson.mb@gmail.com <stacyolson.mb@gmail.com>
Sent: Monday, June 23, 2025 3:16 PM
To: 'Olga Voytovych' <ovoytovych@lemberglaw.com>
Cc: 'Luca Richo' <LRicho@lemberglaw.com>
Subject: RE: 36972-001 : Olson v. FCA | [redacted]
Importance: High

Olga – [redacted]

[redacted]

[redacted]

Please schedule a meeting with yourself and whomever is legally representing us in this matter. I'm extremely upset with how this is going, including the lack of communication and understanding of what is happening here.

Kind Regards,

Stacy Olson

Stacy Olson

Phone: (928) 925-8282
Email: stacyolson.mb@gmail.com
3860 N. Constance Drive, Prescott Valley, AZ 86314

<image001.jpg>

<image002.jpg>

From: Olga Voytovych <ovoytovych@lemberglaw.com>
Sent: Monday, June 23, 2025 2:57 PM
To: 'Stacy Olson' <stacyolson.mb@gmail.com>
Subject: RE: 36972-001 : Olson v. FCA | [redacted]

Hello Stacy,

[redacted]

Thank you.

Olga Voytovych, Paralegal - Manager
Lemberg Law LLC
43 Danbury Road | Wilton | CT | 06897
Tel. 203.653.2250 x 5508 | Fax. 203.653.3424
www.LembergLaw.com

From: Stacy Olson <stacyolson.mb@gmail.com>
Sent: Monday, June 23, 2025 3:06 PM
To: Olga Voytovych <ovoytovych@lemberglaw.com>
Subject: Fwd: 36972-001 : Olson v. FCA | [redacted]

Can you please respond.

Sent from Stacy Olson's iPhone

Begin forwarded message:

> **From:** stacyolson.mb@gmail.com
> **Date:** June 9, 2025 at 12:55:18 PM MST
> **To:** Olga Voytovych <ovoytovych@lemberglaw.com>
> **Subject: RE: 36972-001 : Olson v. FCA |** [redacted]

[redacted]

[redacted]

[redacted] What should I do now? [redacted]

Kind Regards,

Stacy Olson

Stacy Olson

Phone: (928) 925-8282
Email: stacyolson.mb@gmail.com
3860 N. Constance Drive, Prescott Valley, AZ 86314

<image001.jpg>

<image002.jpg>

From: Olga Voytovych <ovoytovych@lemberglaw.com>
Sent: Wednesday, June 4, 2025 12:20 PM
To: 'stacyolson.mb@gmail.com' <stacyolson.mb@gmail.com>
Subject: RE: 36972-001 : Olson v. FCA | [redacted]

Hello Stacy,

[redacted]

Thank you.

Olga Voytovych, Paralegal - Manager
Lemberg Law LLC
43 Danbury Road | Wilton | CT | 06897
Tel. 203.653.2250 x 5508 | Fax. 203.653.3424
www.LembergLaw.com

From: stacyolson.mb@gmail.com <stacyolson.mb@gmail.com>
Sent: Wednesday, June 4, 2025 3:09 PM
To: Olga Voytovych <ovoytovych@lemberglaw.com>
Subject: RE: 36972-001 : Olson v. FCA | [redacted]

> You don't often get email from stacyolson.mb@gmail.com. Learn why this is important

[redacted]

[redacted] What should I do now?

Kind Regards,

Stacy Olson

Stacy Olson

Phone: (928) 925-8282
Email: stacyolson.mb@gmail.com
3860 N. Constance Drive, Prescott Valley, AZ 86314

<image001.jpg>

<image002.jpg>

From: Olga Voytovych <ovoytovych@lemberglaw.com>

Sent: Monday, June 2, 2025 9:12 AM
To: stacyolson.mb@gmail.com
Cc: Yana Kholevchuk <ykholevchuk@lemberglaw.com>
Subject: RE: 36972-001 : Olson v. FCA | [redacted]

Thank you. [redacted]

Olga Voytovych, Paralegal - Manager
Lemberg Law LLC
43 Danbury Road | Wilton | CT | 06897
Tel. 203.653.2250 x 5508 | Fax. 203.653.3424
www.LembergLaw.com

From: stacyolson.mb@gmail.com <stacyolson.mb@gmail.com>
Sent: Monday, June 2, 2025 11:56 AM
To: Olga Voytovych <ovoytovych@lemberglaw.com>
Cc: Yana Kholevchuk <ykholevchuk@lemberglaw.com>
Subject: 36972-001 : Olson v. FCA | [redacted]
Importance: High

Following up on our conversation this morning, [redacted]

[redacted]

[redacted] I've also updated the Smartsheet where all related documentation has been recorded for reference.

Kind Regards,

Stacy Olson

Stacy Olson

Phone: (928) 925-8282

Email: stacyolson.mb@gmail.com
3860 N. Constance Drive, Prescott Valley, AZ 86314

<image001.jpg>

<image002.jpg>

From: stacyolson.mb@gmail.com <stacyolson.mb@gmail.com>
Sent: Wednesday, May 28, 2025 12:06 PM
To: ovoytovych@lemberglaw.com
Subject: FW: 36972-001 : Olson v. FCA US, LLC
Importance: High

From: stacyolson.mb@gmail.com <stacyolson.mb@gmail.com>
Sent: Thursday, May 22, 2025 2:38 PM
To: 'Yana Kholevchuk' <ykholevchuk@lemberglaw.com>; 'Luca Richo' <LRicho@lemberglaw.com>
Subject: RE: 36972-001 : Olson v. FCA US, LLC
Importance: High

Good afternoon,

[redacted]

- [redacted]

- [redacted]

  - [redacted]

[redacted]

Kind Regards,

Stacy Olson

Stacy Olson

Phone: (928) 925-8282
Email: stacyolson.mb@gmail.com
3860 N. Constance Drive, Prescott Valley, AZ 86314

<image001.jpg>

<image002.jpg>

From: Yana Kholevchuk <ykholevchuk@lemberglaw.com>
Sent: Friday, April 4, 2025 6:23 AM
To: 'stacyolson.mb@gmail.com' <stacyolson.mb@gmail.com>
Subject: RE: 36972-001 : Olson v. FCA US, LLC

Hello Stacy,

Yes, I have access now.

Thank you.

Yana Kholevchuk, Paralegal
Lemberg Law LLC
43 Danbury Road | Wilton | CT | 06897
Tel. 203.653.2250 | Fax. 203.653.3424
www.LembergLaw.com

From: stacyolson.mb@gmail.com <stacyolson.mb@gmail.com>
Sent: Thursday, April 3, 2025 9:55 PM
To: Yana Kholevchuk <ykholevchuk@lemberglaw.com>
Subject: RE: 36972-001 : Olson v. FCA US, LLC

Request has been approved, you should have immediate access to all the documents.

From: Yana Kholevchuk <ykholevchuk@lemberglaw.com>
Sent: Tuesday, March 18, 2025 2:34 AM
To: 'Stacy Olson' <stacyolson.mb@gmail.com>
Subject: RE: 36972-001 : Olson v. FCA US, LLC

Hello Stacy,

I sent you the request from ykholevchuk@gmail.com. Please confirm, otherwise please just attach the documents.

Thank you.

<image003.jpg>

Yana Kholevchuk, Paralegal
Lemberg Law LLC
43 Danbury Road | Wilton | CT | 06897
Tel. 203.653.2250 | Fax. 203.653.3424
www.LembergLaw.com

From: Stacy Olson <stacyolson.mb@gmail.com>
Sent: Monday, March 17, 2025 9:25 AM
To: Yana Kholevchuk <ykholevchuk@lemberglaw.com>
Subject: Re: 36972-001 : Olson v. FCA US, LLC

Before I recreate everything can you send me a screenshot of the message you're receiving? The link has worked for everyone else. Thanks!

Sent from Stacy Olson's iPhone

> On Mar 17, 2025, at 5:43 AM, Yana Kholevchuk <ykholevchuk@lemberglaw.com> wrote:
>
> Hello Stacy,
>
> This link doesn't work for me. Can you please re-send the documents?
>
> Thank you.
>
> Yana Kholevchuk, Paralegal
> Lemberg Law LLC

43 Danbury Road | Wilton | CT | 06897
Tel. 203.653.2250 | Fax. 203.653.3424
www.LembergLaw.com

From:
stacyolson.mb@gmail.com <stacyolson.mb@gmail.com>
Sent: Wednesday, March 12, 2025 2:36 PM
To: Yana Kholevchuk <ykholevchuk@lemberglaw.com>
Subject: RE: 36972-001 : Olson v. FCA US, LLC
Importance: High

Good morning Ms. Kholevchuk,

I've compiled all of our documents in Smartsheet. Here's the link: 2023 Dodge Charger Smartsheet Link
When you access the sheet, if you click on the paperclip to the left, the attachment list will open. You can then click on the attachments to preview them:
<image005.png>

<image006.png>

If you have any issues with this, please let me know.

Kind Regards,
Stacy Olson
Stacy Olson

Phone: (928) 925-8282
Email: stacyolson.mb@gmail.com
3860 N. Constance Drive, Prescott Valley, AZ 86314

<image007.jpg>
<image008.jpg>

From: Yana Kholevchuk
Sent: Monday, March 10, 2025 7:28 AM
To: 'stacyolson.mb@gmail.com'
Subject: 36972-001 : Olson v. FCA US, LLC

Dear Stacy:

Olga Voytovych is the paralegal assigned to your case. Feel free to contact her should you have any questions and direct all future correspondence and documents to her. Her email is ovoytovych@lemberglaw.com. We look forward to helping you!

For the attorney to accomplish your case evaluation we ask that you send us the following documents either via fax, email, or upload them to a cloud service (Dropbox, Google Drive, etc.).

Your case is currently under attorney review. If the attorney approves your case, we will send a notice of claim letter to the manufacturer. Manufacturer then typically acknowledges receipt of the claim and we send the manufacturer your vehicle purchase and service documents. This is why it's important we get these documents from you as soon as possible to avoid claim review delays.

Once the manufacturer has your documents, manufacturer take roughly 4 weeks to review your claim and respond. We follow up with manufacturer regularly to ensure your claim is being handled. When the manufacturer responds to your claim, we will let you know and will discuss with you any offers that might be extended.

Please also remember that you are still responsible for making your car payments.

Thank you.

Yana Kholevchuk, Paralegal
Lemberg Law LLC
43 Danbury Road | Wilton | CT | 06897
Tel. 203.653.2250 | Fax. 203.653.3424
www.LembergLaw.com

Exhibit B

From: stacyolson.mb@gmail.com
To: "Sergei Lemberg"
Cc: "Olga Voytovych"; "Luca Richo"; "Trinette Kent"
Subject: Olson v. FCA | [redacted]
Date: Tuesday, June 24, 2025 11:41:01 PM
Importance: High

As I review my options regarding the direction of my case, **I am requesting a detailed billing statement or time log that outlines all legal services performed to date**.

Please include

- itemized entries reflecting the work completed,
- the time spent on each task,
- and who performed the work.

This information is important for me to fully understand the status of the case and the associated work performed under our agreement.

Thank you in advance for your prompt attention to this request. I would appreciate receiving the documentation by the end of the week, June 27, 2025.

Kind Regards,

Stacy Olson

Stacy Olson

Phone: (928) 925-8282
Email: stacyolson.mb@gmail.com
3860 N. Constance Drive, Prescott Valley, AZ 86314

[redacted]

2025 WL 3145869
Only the Westlaw citation is currently available.

Superior Court of Connecticut,
J.D. OF DANBURY.
AT DANBURY.

HOLLY ESTATES DEVELOPMENT, LLC, et al.
v.
Thomas PROVENZANO, et al.

DOCKET NO. DBD-CV-24-5021337-S
|
NOVEMBER 3, 2025

MEMORANDUM OF DECISION SPECIAL MOTION TO DISMISS

Brazzel-Massaro, J.T.R

I. INTRODUCTION

***1** The plaintiffs Holly Estates Development LLC, Negreiro & Son Construction, LLC, and Jose Negreiro filed an application for a Prejudgment Remedy with summons and complaint on October 15, 2024. No hearing was conducted to enter a decision regarding the Prejudgment Application. The complaint named Thomas Provenzano and Jayne Ellen Provenzo as defendants. The plaintiffs filed a Revised Complaint dated May 30, 2025 which consisted of eight counts. Counts one and two alleges common law Slander of Title and statutory Slander of Title, count three sounds in tortious interference with contract, count four alleges tortious interference with business expectancy, count five alleges Slander as to the plaintiffs Negreiro & Son Construction, LLC and Jose Negreiro, count six alleges Statutory Slander per se Intentional and count seven alleges Statutory Slander per se Negligence. The Eighth count is a claim of Violation of the Connecticut Unfair Trade Practices Act (CUTPA). The defendants filed a special motion to dismiss dated June 27, 2025 seeking to dismiss the Fifth, Sixth and Seventh counts of the Revised Complaint pursuant to General Statutes § 52-196a, the Anti-SLAPP Statute. They argue that pursuant to the Anti-SLAPP statute they have demonstrated that the complaint falls within the scope of the statute, that is, that they were exercising their right to free speech, their right to petition the government, or their right of association on a matter of public concern. The plaintiffs filed a memorandum in opposition dated July 25, 2025 and a further supplemental memorandum on July 29, 2025. [1] The court heard argument on July 29, 2025.

II. FACTUAL BACKGROUND

The plaintiff Holly Estates Development LLC ("Holly Estates") owned some undeveloped parcels on Holly Lane in Newtown, Connecticut. The plaintiffs developed some of the parcels as residential properties. The defendants Thomas Provenzo and Jayne Ellen Provenzo purchased the property at 10 Holly Lane, Newtown, Connecticut from Holly Estates. The plaintiff Negreiro & Sons Construction, LLC which is owned by Jose Negreiro was hired by the defendants to build a home on this property. The defendants contend that the home had undisclosed issues which the plaintiffs have failed to correct. The plaintiffs have provided a number of emails from the defendants, in particular Thomas Provenzano about his displeasure with the workmanship and demanding that the plaintiff correct, to his satisfaction problems within his house. There were considerable discussions mostly through emails amongst the parties regarding the demands of the defendants to address the defendants' concerns.

The plaintiffs allege that the defendants filed two separate lis pendens on the plaintiff's properties (Exhibit A and B of the Revised Complaint) after the plaintiffs did not perform as the defendants requested to make corrections on the property. The properties at issue were to be sold to prospective buyers at the time. The second lis pendens was not served and it purported to relate to litigation against the plaintiff when no such litigation existed. The plaintiffs allege that the filing of the two lis pendens resulted in an inability to convey Lot 8 of Holly Lane or market for sale Lot 13 on Holly Lane because there was not clear title. The defendants executed releases of the lis pendens on September 5, 2024. However, on October 24, 2023, the defendants published a Customer Review on the Better Business Bureau website. This review was aimed specifically at Negreiro & Son Construction. The review contained many statements regarding the work of the plaintiff and practices of the company. It stated in part: "We bought a house in there(sic) subdivision... My neighbors and I have had nothing but problems with Joe. He sets you up to go over your allotted allowance... Everything is an extra to Joe. The town told me he has been fined for noncompliance, and lies on his building permits.... He stands by nothing... Its been months since we closed, and we are still waiting on our punch list to be completed... Do not close or sign anything until everything is done to your satisfaction. If I only knew then what I know now. Everything is now in my attorneys hands. He took the fun out of this project for my wife and I and caused us a lot of stress. I can't wait for the day when this piece of ____ is out of my life!!!"

***2** The defendants posted another review on Google about the plaintiffs, which the plaintiffs allege was defamatory. However, that review was removed by the defendants and has not been produced by any party. The defendants claim that the customer reviews are social media posts which are public forums pursuant to the statute and that the subject matter is a matter of public concern. The defendants filed this special motion to dismiss claiming that the Anti-SLAPP statute applies and counts five, six and seven should be dismissed.

III. DISCUSSION

A. General Standard

General Statutes § 52-196a provides in pertinent part: "The court shall grant a special motion to dismiss if the moving party makes an initial showing, by a preponderance of the evidence, that the opposing party's complaint, counterclaim or cross claim is based on the moving party's exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, unless the party that brought the complaint, counterclaim or cross claim sets forth with particularity the circumstances giving rise to the complaint, counterclaim or cross claim and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint, counterclaim or cross claim."

Thus, the court reviews the argument of the defendants that the claims in the Revised Complaint contained in counts five, six and seven must be dismissed because they fall under the scope of the Anti-SLAPP, that is, plaintiffs intend to restrict the speech of the defendants on a matter of public concern.

General Statutes § 52-196a, colloquially referred to as the Anti-SLAPP statute, [2] was enacted to protect parties that have spoken out on matters of public concern from meritless litigation intended to chill free speech among other rights. See *Lafferty* v. *Jones,* 336 Conn. 332, 382 n.36, 246 A.3d 429 (2020), cert. denied, —— U.S. ——, 141 S. Ct. 2467 (2021). The statute permits a party to file a special motion to dismiss in a case that is based on the party's exercise of certain constitutional rights, specifically the right of free speech, right to petition the government, and the right of association, in connection with a matter of public concern. General Statutes § 52-196a (b). The court conducts a two-part analysis when deciding a special motion to dismiss. First, the court will consider whether the moving party has made "an initial showing, by a preponderance of the evidence, that the opposing party's complaint... is based on the moving party's exercise of its right to free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern..." General Statutes § 52-196a (c) (3). If the defendants satisfy this initial showing, the court then considers whether "the party that brought the complaint... demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint..." General Statutes § 52-196a (c) (3).

B. Application of the Statute

***3** The threshold issue under the statute is whether the defendants have made an "initial showing" by a preponderance of the evidence, that the opposing parties' complaint...is based on the moving parties' exercise of their rights of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern ..." General Statutes § 52-196a (e) (3). Turning to the first step of the analysis, § 52-196a (a) (2) defines the right of free speech as "communicating, or conduct furthering communication, in a public forum on a matter of public concern." Thus, the court reviews the defendants' argument that the mediums utilized were "in a public forum" and were "a matter of public concern."

1. Public Forum

The defendants assert that the customer reviews to Google and the Better Business Bureau are each a public forum. California courts have held that "[w]eb sites accessible to the public .... are public forums for purposes of the anti-SLAPP statute." (Internal quotation marks omitted.) *Nygard, Inc.* v. *Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1039, 72 Cal. Rptr. 3d 210 (2008). California courts have analogized internet websites to an electronic public bulletin board "open to literally billions of people all over the world." *Chaker* v. *Mateo*, 209 Cal. App. 4th 1138, 1146, 147 Cal. Rptr. 3d 496 (2012); see also *Wilbanks* v. *Wolk*, 121 Cal. App. 4th 883, 897, 17 Cal. Rptr. 3d 497 (2004) (public bulletin board "is public because it posts statements that can be read by anyone who is interested, and because others who choose to do so, can post a message through the same medium that interested persons can read").

Google is a participatory website which makes a wide range of products and services including advertising for businesses available to the public. The public may read a plethora of written statements about people, events or any information that the individual wishes to share with others in the public domain. In this regard, the defendants wrote a review about the plaintiff and the business for all to read. It was information about the plaintiffs which they claim is defamatory. The court does not have access to the publication but does agree that a posting on Google is a public forum. However, there is a second posting on The Better Business Bureau site which posting has been disclosed for purposes of this motion. The court first addresses the act of posting on this site and hereafter will examine the claim whether the post is a matter of public concern. The site known as the Better Business Bureau permits individuals to offer comments about a business and in some instances to file a complaint about difficulties they may have experienced with a business as well as good experiences and ratings of business. The Better Business Bureau is not a government agency, although the defendants attempt to connect it as a working partner with state or federal agencies. When questioned during argument, counsel conceded that they were not familiar with any process or person from the Better Business Bureau and that he "got the language from the Better Business Bureau's website that they, you know work with transparency and trust between businesses and consumers in Connecticut." (Tr. July 29, 2025 p. 26). Additionally, counsel conceded he did not know how (if anyway) the Better Business Bureau reached out to governmental agencies. While it is evident that the Better Business Bureau is not a governmental agency, it appears to be open to the public a forum to make complaints about a consumers opinions regarding particular workmanship and responsibility of a business. This site in many ways is similar to this court's review of a posting on Zillow. *Mulvihill* v. *Spinnato*, 228 Conn. App. 781, 326 A.3d 251 (2024), cert denied, 350 Conn.926, 326 A.3d 248 (2024). In Mulvihill, the Zillow site which was utilized by the defendant as a public forum for purposes of the Anti-SLAPP claim. The Zillow site review addressed the professional work of realtor very much like the defendants here addressed the workmanship of the builder.

***4** Thus, the first part of the statute addressing a public forum has been satisfied and the court analyses the argument that the posts concern a matter of public concern. [3]

2. Matter of public concern

Section 52-196a (a) (1) defines a matter of public concern as "an issue related to (A) health or safety, (B) environmental, economic or community well-being, (C) the government, zoning and other regulatory matters, (D) a public official or public figure, or (E) an audiovisual work."

The defendants argue that their customer reviews address a matter of public concern. They state that the "reviews involved concerns of the community, the economic well-being of other homebuyers, other zoning and regulatory matters." (Tr. July 29, 2025 at 10). The defendants argued that "the [U]sability, functionality, just overall quality of new homes being built in Connecticut directly relates to the well-being of the community..." and that "the plaintiffs' business practices relate to zoning and regulatory matters as they must receive the requisite approvals to purchase and develop their lands." Id. at 11.

Defendants' counsel also argued that the plaintiffs purchase undeveloped land in Connecticut and build houses to be sold to residents of the state. The defendants have not presented any widespread problem with the development of the plaintiffs other than speculation and hearsay. The complaints that are the subject of these publications relate to the building of plaintiffs' house in particular. Id. at 13. Counsel stated that he "can't speak on behalf of the other neighbors in the neighborhood, but if this was the quality of work done on the defendants' house in particular, there's question as to, you know the level of materials used in other homes as well..." Id. 14. The entire argument of the defendants is the poor workmanship and the quality of the materials used on this house. The affidavit of Thomas Provenzano in support of this motion discusses solely his issues with the house he purchased at 10 Holly Lane, Newtown, Connecticut. (Ex. A, Affidavit of Provenzano). In particular, the defendant stated: "8. After closing, the issues were not adequately addressed, and the additional work performed by the plaintiffs was, in our opinion, improperly completed; 9. For example, not only did the plaintiffs install the wrong type of window, but they also installed the windows incorrectly, allowing water to leak in; 10. There were numerous other issues with the work performed by the plaintiffs..." The defendants then discussed the reviews and confirmed that the reviews were based upon "*our* experience... *our* interactions..." and "*our* opinion of the work done on our property and *our* dissatisfaction with how the entire situation was handled by the plaintiffs..." (Emphasis Added) (Ex. A).

***5** The facts of this case as presented in the memorandum, the affidavits and the additional exhibits do not bring to the forefront a matter of public concern but are without doubt a dispute with the builder about problems and contract work for this house. The defendants claim that the builder did not satisfy the terms of the contract, as they interpreted them. The contract disputes are not public concerns.

Although as part of the email exchange and complaints, the defendants refer to the involvement of the plaintiff's wife, who is not a party to this action, the allegation of alleged inappropriate involvement by the defendant's wife offers not substantive evidence that would create a matter of public concern. The Revised Complaint does not include any such allegations. There are no civil or criminal actions alleged or pursued that would rise to the level of a public concern. *Gleason* v. *Smolinski*, 319 Conn. 394, 415, 125 A.3d 920 (2015) (allegation of criminal wrongdoing rises to the level of a public concern).

The defendants have failed to make an initial showing that the statement to Google or the Better Business Bureau are matters of public concern and thus the Anti-Slapp statute is not applicable.

IV. CONCLUSION

Based upon the above, the defendants have failed to make an initial showing by a preponderance of evidence that the Revised Complaint is based on the defendant exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state of Connecticut with a matter of public concern and the motion to dismiss counts five, six and seven is denied. [4]

All Citations

Not Reported in Atl. Rptr., 2025 WL 3145869

Footnotes

1 The plaintiffs originally argued that the motion was not timely filed. The court granted a motion for extension of time, D.E. # 116.01. The plaintiffs withdrew this argument in the Reply Memorandum and therefore the court will not address this argument.

2 "SLAPP is *an* acronym for 'strategic lawsuit against public participation,' the distinctive elements of [which] are (1) a civil complaint (2) filed against a nongovernmental individual (3) because of their communications to government bodies (4) that involves a substantive issue of some public concern.... The purpose of a SLAPP suit is to punish and intimidate citizens who petition state agencies and have the ultimate effect of chilling any such action." (Internal quotation marks omitted.) *Lafferty* v. *Jones*, 336 Conn. 332, 337 n. 4, 246 .3d 429 (2020), cert. denied, —— U.S. ——, 141 S. Ct. 2467, (2021).

3 Since neither the defendants nor the plaintiffs have been able to produce the actual posting, the court cannot consider whether the matter in relation to the Google posting is a matter of public concern. In addition, the defendants have represented that the language is similar to that provided in the Better Business Bureau review. Thus, the court will analyze the public concern based upon the Better Business Bureau complaint.

4 Because the defendants have failed to demonstrate the initial showing of a matter of public concern, the motion fails pursuant to the Anti-SLAPP statute, the court does not address the additional argument of the defendants in regard to the burden of the plaintiffs to demonstrate that they will be able to prevail on their claims to the degree necessary to establish probable cause.

End of Document

2026 WL 948918
Only the Westlaw citation is currently available.

Superior Court of Connecticut,
J.D. OF TOLLAND.
AT ROCKVILLE.

Mohamed HUSSAIN et al.
v.
Mansoor QURAISHI et al.

DOCKET NO. TTD-CV25-5019431-S
|
MARCH 31, 2026

MEMORANDUM OF DECISION RE: DEFENDANT'S MOTION TO DISMISS (Entry No. 107.00)

Graff, J.

***1** On October 22, 2025, the defendant, Mansoor Quraishi, filed a special motion to dismiss, with an accompanying memorandum of law and exhibits. Docket Entry 107. On November 26, 2025, the plaintiffs filed an objection to the special motion to dismiss. Docket Entry 114. On December 3, 2025, the plaintiffs filed a supplemental objection to the special motion to dismiss. Docket Entry 116. Oral argument on the special motion to dismiss was held on December 5, 2025.

On March 4, 2026, the court issued an order to show cause relating to the special motion to dismiss and scheduled a hearing for March 18, 2026. Docket Entry 123. The order notified defendant's counsel that he should be prepared to explain how the brief was prepared, including by what means legal research was conducted. Defendant's counsel was notified that he must be prepared to explain whether generative artificial intelligence (AI) was used in the preparation of the brief filed at Docket Entry 107, and if so, which AI platform was used, and to what extent it was used in the preparation of the brief. The order detailed eight (8) case citations that were problematic, including instances where the cases did not exist; the quotes did not exist; and the citations were wrong. All parties and counsel were required to attend the hearing.

At the hearing, Attorney Quraishi admitted that he used AI to write the special motion to dismiss. Transcript, p. 5:1-12. Attorney Quraishi indicated that he intended to pursue the motion to dismiss, and to rest on the statutory framework. Transcript, p. 12:2-24. The plaintiff did not object to the defendant resting on the statutory framework. The court is mindful that General Statutes § 52-196a confers on the defendant a "special statutory benefit" to file a motion to dismiss. Since the plaintiff did not object to the defendant proceeding with his motion to dismiss, and since the defendant has statutory right to file the special motion to dismiss, the court will consider the defendant's motion to dismiss without the AI generated portions of the brief. See order at Docket Entry 123 for a list of the AI generated/hallucinated portions of the brief.

FACTS AND PROCEDURAL BACKGROUND

General Statutes § 52-196a (e)(2) provides: "When ruling on a special motion to dismiss, the court shall consider pleadings and supporting and opposing affidavits of the parties attesting to the facts upon which liability or a defense, as the case may

be, is based." The court finds the following facts based on the complaint, dated August 26, 2025, and the affidavits submitted by both sides.

Mohamed Hussain, is the sole member of VCare Family Practice LLC. Aiholaney Garcia is an employee of VCare Family Practice LLC. From August 2016 to February 14, 2018, the defendant provided computer/technological support to VCare Family Practice LLC. The defendant was paid in full for all of the invoices that he submitted to the plaintiffs.

From March 2016 through January 2018, the defendant invested some money with VCare Family Practice LLC to open a practice in Hartford. The Hartford practice did not perform well and had to be sold. The sale did not cover the losses and there were no assets to distribute to the investors. Entry 114, Affidavit of Hussain; Entry 105, Affidavit of Quraishi.

***2** Between July 2, 2025, and July 11, 2025, the defendant made ten (10) posts on his Facebook page about the plaintiffs. People were not able to comment on the posts. The posts are as follows:

9. July 2, 2025. "Mohamed Altaf Hussain...Aiholaney Torres...These two individuals conspired together to COMMIT INDETITY FRAUD AND THEFT OF A MEDICAL DOCTOR...Mr. HUSSAIN IS A HIGH-LEVEL CRIMINAL...Mr. HUSSAIN also transport CONTROLLED SUBSTANCES to INDIA from the USA and sold them there locally"

10. July 3, 2025. "The MALE NURSE ORGANIZED MEDICAL MAFIA COVEN/CULT OPERATED BY MOHAMED ALTAF HUSSAIN, APRN known as SHIFA CLINIC in VERNON, CONNECTICUT...TARGETING A MEDICAL DOCTOR...TO IMPERSONATE USE AS HIS GHOST MEDICAL DIRECTOR"

11. July 6, 2025. "TO: MOHAMED ALTAF HUSSAIN, APRN & CO 'DEFRAUDING MEDICARE AND MEDICAID since 2016' ".

12. July 8, 2025. "TO: MOHAMED ALTAF HUSSAIN, APRN et al AIHOLANEY 'LANEY' TORRES YOU GUYS WOULD'VE BEEN BETTER OFF USING DR ZHIVAGO AS YOUR GHOST MEDICAL DIRECTOR FOR SHIFA CLINIC IN ELLINGTON CONNECTION (now in VERNON) INSTEAD OF DR KISHORE THAKUR, A TERMINALLY ILL CANCER PATIENT WITH A COLOSTOMY BAG, LIVING OUT OF HIS CAR IN THE PARKING LOT OF THE MOHEGAN SUN CASINO"

13. July 8, 2025. "You have to explain to criminals like MOHAMED ALTAF HUSSAIN APRN and AIHOLANEY 'LANEY' TORRES...YOU GUYS VIOLATED A CONNECTICUT LAW BY FAILING TO REPORT AN IMPAIRED PRACTITIONER...YOU SCRWED ME OUT OF THOUSANDS OF DOLLARS...I HAVE THE GOOGLE DRIVE WITH ALL THE FAKE DOCUMENTS YOU STAMPED DR KISHORE THAKUR'S NAME ON"

14. July 8, 2025. "To: MOHAMED ALTAF HUSSAIN, APRN BE CLEAR, THIS IS NOT GOING TO STOP UNTIL YOU ARE IN PRISON FOR DEFRAUDING THE FEDERAL GOVERNMENTS MEDICARE and MEDICAID PROGRAMS AS WELL AS VIOLATING THE CONTROLLED SUBSTANCES ACT OF 1970...MARGARET NAVAROLI WANTS TO FILE CHARGES ON THE DEATH OF HER SON, WHILE HE WAS UNDER YOUR CARE FOR SUBOXONE...I believe both of you also stole my social security number."

15. July 8, 2025. "ONE OF OUR PATIENTS NAMED MICHELLE SAID YOU FONDLED HER BREASTS INAPPROPRIATELY WHILE EXAMINING HER AT STAFFORD MEDICAL GROUP"

16. July 8, 2025. "I'M WRITING TO THE JUDGES DIRECTLY ABOUT HOW YOU AND AIHOLANEY TORRES STOLE DR KISHORE THAKUR'S IDENTITY...Also, I have the Google Drive with your fraudulent Medicare documents in it...Also we should let the judges know how you broke into Stafford Medical's Electronic Health Record system and STOLE THEIR PATIENTS, DIVERTING THEM TO SHIFA CLINIC"

17. July 11, 2025. "THEY ARE EXPERTS AT PURJURY (sic) AND HAVE BECOME SUPER COMFORTABLE MAKING FALSE STATEMENTS JUST ONE MORE THING THEY ARE PILING ON THEIR SOON TO BE PUBLIC RECORD OF SERIOUS CRIMINAL OFFENSES AGAINST FEDERAL HEALTHCARE PROGRAMS"

18. July 11, 2025. "COME TO SHARIA LAW CLINIC SO WE CAN ALL RIP OFF MEDICAID"

Entry 100.32, Complaint, ¶¶ 9-18.

As a result of the defendant's Facebook posts from early July 2025, Hussain applied for a Civil Protection Order, Docket Number TTD-CV25-5019232-S. Docket Entry 114, Affidavit of Hussain. On July 21, 2025, the court granted the application for civil protection order for a period of one (1) year against the defendant.

Garcia and the defendant were in a dating relationship for one month in 2015. As a result of the defendant's Facebook posts from early July 2025, Garcia applied for a Restraining Order, Docket Number TTD-FA25-5019231-S. Docket Entry 114, Affidavit of Garcia. The ex parte restraining order was granted, and the order was served in hand on the defendant on July 8, 2025. Docket Entry 114, Affidavit of Garcia. On July 16, 2025, the court issued a restraining order for a period of one (1) year against the defendant. A warrant was issued for the defendant's violation of the restraining order due to Facebook posts made by the defendant. Entry 114, Affidavit of Garcia.

***3** The plaintiffs filed the operative complaint on August 26, 2025. In the complaint, the plaintiffs set forth claims for defamation, intentional infliction of emotional distress, negligent infliction of emotional distress and invasion of privacy. On October 22, 2025, the defendant filed the present special motion to dismiss. In the motion to dismiss, the defendant argues that the statements at issue are on matters of public concern and that the plaintiffs do not have probable cause that they will prevail on the merits of their claims. On November 26, 2025, the plaintiffs filed an opposition to the special motion to dismiss. The plaintiffs argue that the special motion to dismiss should be denied as the statements at issue were not made in a public forum and are not of public concern. The plaintiffs also argue that there is probable cause that they will prevail on the merits of their claims.

In their opposition, the plaintiffs claim that the special motion to dismiss was filed to delay the proceedings and that the motion is frivolous. The plaintiffs are seeking attorney's fees for the costs associated with their opposition. The basis for the plaintiffs' argument is that on October 22, 2025, the same day that the special motion to dismiss was filed, the court was scheduled to proceed with a hearing on the plaintiffs' application for prejudgment remedy. By way of the application for the prejudgment remedy, the plaintiffs sought to attach the defendant's ownership interest in real estate located at 2 Davenport Road, West Hartford, Connecticut. The plaintiffs stated in their application for the prejudgment remedy that "[t]here is a reasonable likelihood that Defendant has sold, will, or will attempt to sell, remove, convey dissipate, or conceal assets with the intent to hinder, delay, or defraud Plaintiffs which assets include, but are not limited to, said Defendant's ownership interest in real estate known at 2 Davenport Road, West Hartford, Connecticut." Docket Entry 100.31.

On December 3, 2025, the plaintiffs filed a supplemental opposition to the special motion to dismiss. In the supplemental opposition to the special motion to dismiss, the plaintiffs state that the defendant fraudulently transferred the property located at 2 Davenport Road, West Hartford, Connecticut to his father, Sultan A. Quraishi and a Katharina A. Dienwebel. The plaintiffs argue that the quitclaim deed was recorded on October 22, 2025, and is dated September 14, 2021. The plaintiffs further argue that the quitclaim deed is evidence of the defendant's improper use of the special motion to dismiss to delay the proceedings so that the defendant could transfer the property out of his name before the application for the prejudgment remedy could be ruled on.

A hearing on the special motion to dismiss was held on December 5, 2025. [1]

DISCUSSION

***4** General Statutes § 52-196a "constitutes a special statutory benefit ... that provides a moving party with the opportunity to have [a] lawsuit dismissed early in the proceeding and stays all discovery, pending the trial court's resolution of the special motion to dismiss." (Citations omitted; internal quotation marks omitted). *Priore* v. *Haig*, 344 Conn. 636, 659, 280 A.3d 402 (2022). "As this court has observed, [a] special motion to dismiss filed pursuant to § 52-196a ... is not a traditional motion to dismiss based on a jurisdictional ground. It is, instead, a truncated evidentiary procedure enacted by our legislature in order to achieve a legitimate policy objective, namely, to provide for a prompt remedy." (Internal quotation marks omitted). *Mulvihill v. Spinnato*, 228 Conn. App. 781, 782–83, 326 A.3d 251, 254, *cert. denied*, 350 Conn. 926, 326 A.3d 248 (2024).

Under § 52-196a, "a party may file a special motion to dismiss when the opposing party's complaint is based on the moving party's exercise of, among other things, the right of free speech or the right to petition the government in connection with a matter of public concern." *Priore*, 344 Conn. at 659. "Pursuant to § 52-196a (e) (3), the moving party bears the initial burden to show by a preponderance of the evidence that the complaint is based on the moving party's exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern ...." (Internal quotation marks omitted). *Birch Hill Recovery Ctr., LLC v. High Watch Recovery Ctr., Inc.*, 233 Conn. App. 182, 200, 339 A.3d 661 (2025). "If the moving party satisfies that burden, the burden shifts to the nonmoving party to establish that there is probable cause, considering all valid defenses, that the [nonmoving] party will prevail on the merits of the complaint ...." Id. "For a special motion to dismiss to be granted, the court must resolve both prongs in favor of the moving party." (Internal quotation marks omitted.) *Aguilar* v. *Eick*, 234 Conn. App. 281, 287 n.6, 344 A.3d 263 (2025).

A. Public Forum

The defendant's statements were made in the public forum. See *Primrose Companies, Inc. v. McGee*, Superior Court, judicial district of Waterbury, Docket No. UWY-CV-21-6062747-S (August 26, 2022, *Pierson, J.*); *Jackson v. Mayweather*, 10 Cal. App. 5th 1240, 1252, 217 Cal. Rptr. 3d 234, 245 (2017), *as modified* (Apr. 19, 2017) (Facebook posts public forum).

The plaintiffs argue that the posts were not made in the public forum because the defendant turned off the public comments. "California courts have held that '[w]eb sites accessible to the public .... are public forums for purposes of the anti-SLAPP statute.' (Internal quotation marks omitted.) *Nygard, Inc.* v. *Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1039, 72 Cal. Rptr. 3d 210 (2008). California courts have analogized internet websites to an electronic public bulletin board 'open to literally billions of people all over the world.' *Choker* v. *Mateo*, 209 Cal. App. 4th 1138, 1146, 147 Cal. Rptr. 3d 496 (2012); see also *Wilbanks* v. *Wolk*, 121 Cal. App. 4th 883, 897, 17 Cal. Rptr. 3d 497 (2004) (public bulletin board 'is public because it posts statements that can be read by anyone who is interested, and because others who choose to do so, can post a message through the same medium that interested persons can read')." (Internal quotation marks omitted). *Holly Estates Development, LLC v. Provenzano*, Superior Court, judicial district of Danbury, Docket No. DBD-CV-24-5021337-S (November 3, 2025, Brazzel-Massaro, J.T.R.). The fact that the defendant turned off the public comments function is not dispositive on the issue of whether the posts were made in the public forum. The defendant's posts were made on Facebook for anyone in the public to see.

B. Matter of Public Concern

***5** The defendant argues that the statements in the posts addressed health and safety and therefore the posts were made on a matter of public concern.

A matter of public concern is defined as "an issue related to (A) health or safety, (B) environmental, economic or community well-being, (C) the government, zoning and other regulatory matters, (D) a public official or public figure, or (E) an audiovisual work ...." General Statutes § 52–196a (a) (1). "Courts have found that mixed questions of private and public concerns may be protected under the first amendment and that the fact that a statement evolves from a personal dispute does not preclude

some aspect of it from touching [on] matters of public concern." (Internal quotation marks omitted.) *Robinson* v. *V. D.*, 346 Conn. 1002, 1009, 293 A.3d 345 (2023). Generally, speech arising from a personal dispute implicates a matter of public concern when the content of the speech concerns not only the individual but could conceivably be of concern to the general public. See id., 1010 (finding public concern where speech extended beyond parties to systemic issues within governmental entity and broader community interests); see also *Balasubramanian v. Patel*, Superior Court, judicial district of Hartford, Docket No. HHD CV 25-6202901S (January 5, 2026, *Shaikh, J.*). "As the United States Court of Appeals for the Second Circuit recently stated: [S]peech on matters of public concern is at the heart of [f]irst [a]mendment protection.... Whether speech addresses a matter of public concern is to be determined by the content, form, and context of [the relevant] statement, as revealed by the whole record.... Speech that relates to any matter of political, social, or other concern to the community ... which may include conduct implicat[ing] public safety and welfare ... for example, generally falls within the heart of the [f]irst [a]mendment's protection." (Citations omitted; internal quotation marks omitted.) *Robinson v. V. D.*, 229 Conn. App. 316, 338–39, 328 A.3d 198 (2024).

"Because Connecticut's anti-SLAPP statute was so recently enacted, Connecticut courts routinely refer to other states' case law, including California and Nevada, to interpret the Connecticut statute." *Sicignano* v. *Pearce*, 228 Conn. App. 664, 678, 325 A.3d 1127 (2024). "[C]ourts in California and Nevada ... have utilized the following principles for distinguishing between a public and private interest: 'First, public interest does not equate with mere curiosity.... Second, a matter of public interest should be something of concern to a substantial number of people.... Thus, a matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest.... Third, there should be some degree of closeness between the challenged statements and the asserted public interest ... the assertion of a broad and amorphous public interest is not sufficient .... Fourth, the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of [private] controversy...." *Robinson* v. *V.D.*, 229 Conn. App. at 339 (citing *Weinberg* v. *Feisel*, 110 Cal. App. 4th 1122, 1132, 2 Cal. Rptr. 3d 385 (2003); *Smith* v. *Zilverberg*, 137 Nev. 65, 68, 481 P.3d 1222 (2021); 61A Am. Jur. 2d 448, Pleading § 380 (2021)).

***6** In the present case, some of the allegations of the complaint are about a private dispute between former co-workers that escalated into a course of frequent social media posting about the plaintiffs' personal and business relationships. See *Balasubramanian, supra; Robinson* v. *V. D.*, supra, 346 Conn. 1010. The content of the social media posts in paragraphs 11, 12, 13, 14, and 16 of the complaint demonstrate the personal dispute between the parties. The defendant wrote several of the social media posts directly addressed to the plaintiffs, starting the social media posts with the greeting "To:" followed by the plaintiff's names. See above list, posts at paragraphs 11, 12, 14. In addition, the defendant frequently used the word "you" in the posts to speak directly to the plaintiffs. For example, he wrote: "You guys violated a Connecticut law by failing to report an impaired practitioner." He also wrote: "You scrwed [sic] me out of thousands of dollars." See above list, post at paragraph 13. The defendant also addressed the plaintiffs, telling them that he planned to write to the judges about the plaintiffs' participation in identity fraud and Medicare fraud. See above list, post at paragraph 16. The defendant wrote this post on the same day that he was served in hand with the ex parte restraining order. The fact that the defendant addressed the posts to the plaintiffs and spoke directly to the plaintiffs in the posts undermines his argument that he was using the posts "to inform the public about critical healthcare issues." Docket Entry 107, p. 15. See *Holly Estates Development, LLC*, supra (postings to Google and Better Business websites were personal in nature by using "*our* experience... *our* interactions..." and "*our* opinion of the work done on our property and *our* dissatisfaction with how the entire situation was handled by the plaintiffs..." (Emphasis in original)).

In addition, by looking at the context of the posts, the timing of the defendant's posts cast doubt on the defendant's argument that he is now trying to warn the public about the plaintiffs' activities that occurred several years ago. The defendant wrote at least two if not more of the posts after being served with the ex parte restraining order. Complaint, ¶¶ 17-18. The business and personal relationships between the parties ended seven (7) years ago. Any concern that the defendant had about the plaintiffs' alleged fraudulent activities could have been addressed years ago. The defendant provides no credible explanation for this lapse in time. [2]

The posts in paragraphs 11, 12, 13, 14 and 16 of the complaint do not bring to the forefront a matter of public concern but are without a doubt a personal dispute between the parties. The court finds that defendant has failed to make an initial showing that the posts in paragraphs 11, 12, 13, 14 and 16 are on matters of public concern.

Turning to the posts in paragraphs 9, 10, 15, 17 and 18, the defendant has met his burden of showing that they involve matters of public concern. Importantly, the defendant is not speaking directly to the plaintiffs in these specific posts. Although the defendant uses the word "you" in the post in paragraph 15, it is not clear who "you" is. The posts in paragraphs 9, 10, 15, 17 and 18 refer to Medicaid fraud, impersonation of a doctor, identity fraud, transportation of controlled substances from a foreign country, and inappropriate touching during a medical examination. These posts address matters of health and safety that concern the public.

C. Probable Cause to Prevail on the Merits

1. Defamation

The court must now determine if the plaintiffs have probable cause to prevail on the merits of their claims relating to the posts in paragraphs 9, 10, 15, 17 and 18 of the complaint.

"The legal idea of probable cause is a bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a man of ordinary caution, prudence and judgment, under the circumstances, in entertaining it." (Internal quotation marks omitted.) *Elder* v. *Kauffman*, 204 Conn. App. 818, 825, 254 A.3d 1001 (2021). "Proof of probable cause is not as demanding as proof by preponderance of the evidence ... and is substantially less than that required for conviction under the reasonable doubt standard." (Citation omitted; internal quotation marks omitted.) *Mulvihill*, 228 Conn. App. at 790. "Probable cause is a flexible common sense standard ... [that] does not demand that a belief be correct or more likely true than false." (Internal quotation marks omitted.) *36 DeForest Avenue, LLC* v. *Creadore*, 99 Conn. App. 690, 695, 915 A.2d 916, cert. denied, 282 Conn. 905, 920 A.2d 311 (2007).

***7** "In assessing whether the plaintiff established probable cause that it would prevail under the second prong of § 52-196a (e) (3), the court must construe the pleadings, affidavits, and other proof submitted in the light most favorable to the [plaintiff] ... and determine whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment." *Birch Hill Recovery Ctr., LLC*, 233 Conn. App. at 200–01.

In counts one, five and nine, the plaintiffs set forth claims of defamation. The plaintiffs allege and argue that the statements are defamatory because the defendant made statements of fact and because they are defamation per se. "A defamatory statement is defined as a communication that tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him ...." (Internal quotation marks omitted.) *NetScout Systems, Inc.* v. *Gartner, Inc.*, 334 Conn. 396, 410, 223 A.3d 37 (2020). "Defamation is comprised of the torts of libel and slander. Defamation is that which tends to injure reputation in the popular sense; to diminish the esteem, respect, goodwill or confidence in which the plaintiff is held, or to excite adverse, derogatory, or unpleasant feelings or opinions against him." (Internal quotation marks omitted.) *DeVito* v. *Schwartz*, 66 Conn. App. 228, 234, 784 A.2d 376 (2001). "Slander is oral defamation.... Libel ... is written defamation." (Internal quotation marks omitted.) *Mercer* v. *Cosley*, 110 Conn. App. 283, 297, 955 A.2d 550 (2008). "Whether words are actionable per se is a question of law for the court.... All of the circumstances connected with the publication of defamatory charges should be considered in ascertaining whether a publication [i]s actionable per se." (Citations omitted.) *Miles* v. *Perry*, 11 Conn. App. 584, 586-87 and 602-604, 529 A.2d 199 (1987) (affirming trial court's finding, even though plaintiff only claimed humiliation and mental anguish, that defendants' remarks about plaintiff were actionable per se as libel and slander wherein they falsely claimed she misappropriated funds during church meeting). "Libel or slander is ... actionable per se if it charges a crime involving moral turpitude or to which an infamous penalty is attached"; (citations omitted) id., 602; but a statement is "not slanderous per se if [it] charge[s] no more than specific acts, unless those acts are so charged as to amount to an allegation of general incompetence or lack of integrity." *Proto* v. *Bridgeport Herald Corp.*, 136 Conn. 557, 567, 72 A.2d

820 (1950). "When the defamatory words are actionable per se, the law conclusively presumes the existence of injury to the plaintiff's reputation. [The plaintiff] is required neither to plead nor to prove it." (Internal quotation marks omitted.) *Lowe* v. *Shelton*, 83 Conn. App. 750, 766, 851 A.2d 1183, cert. denied, 271 Conn. 915, 859 A.2d 568 (2004). "To prevail on a common-law defamation claim, a plaintiff must prove that the defendant published false statements about her that caused pecuniary harm." *Daley* v. *Aetna Life & Casualty Co.*, 249 Conn. 766, 795, 734 A.2d 112 (1999).

In order to support a cause of action for defamation, "the statement in question must convey an objective fact, as generally, a defendant cannot be held liable for expressing a mere opinion." Id. "Although it is clear that expressions of opinion are constitutionally protected, the determination of whether a specific statement is one of opinion or one of fact is difficult ... [and] must be made from the perspective of an ordinary reader of the statement. Some of the factors used to make this determination are: (1) its truth or falsity; (2) the language used; and (3) its context." (Internal quotation marks omitted.) *Scandura* v. *Friendly Ice Cream Corp.*, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. CV-93-0529109-S (July 5, 1994, *Hennessey, J.*). "A statement can be defined as factual if it relates to an event or state of affairs that existed in the past or present and is capable of being known.... In a libel action, such statements of fact usually concern a person's conduct or character.... An opinion, on the other hand, is a personal comment about another's conduct, qualifications or character that has some basis in fact." (Citations omitted; emphasis omitted.) *Goodrich* v. *Waterbury Republican-American, Inc.*, 188 Conn. 107, 111, 448 A.2d 1317 (1982). Although "this distinction [between fact and opinion] may be somewhat nebulous ... [t]he important point is whether ordinary persons hearing or reading the matter complained of would be likely to understand it as an expression of the speaker's or writer's opinion, or as a statement of existing fact." (Internal quotation marks omitted.) Id., 111-12. "[I]f the alleged defamatory words could not reasonably be considered defamatory in any sense, the matter becomes an issue of law for the court.... When such a determination is made, the words that are claimed to be defamatory are given their natural and ordinary meaning and are taken as reasonable persons would understand them.... Moreover, the words must be viewed in the context of the entire editorial." (Citations omitted; internal quotation marks omitted.) *Dow* v. *New Haven Independent, Inc.*, 41 Conn. Supp. 31, 36, 549 A.2d 683 (1987).

***8** "At common law, [t]o establish a prima facie case of defamation, the plaintiff must demonstrate that: (1) the defendant published a defamatory statement; (2) the defamatory statement identified the plaintiff to a third person; (3) the defamatory statement was published to a third person; and (4) the plaintiff's reputation suffered injury as a result of the statement." (Emphasis omitted; internal quotation marks omitted.) *Stevens* v. *Khalily*, 220 Conn. App. 634, 642, 298 A.3d 1254, cert. denied, 348 Conn. 915, 303 A.3d 260 (2023).

The defendant admits in his affidavit that he made the statements to inform the public. Docket Entry 107, Exhibit A. He also swears that he made the statements based on factual information that he observed or confirmed through reliable sources. Furthermore, the plain language of the posts indicates that they are meant to convey statements of fact. The defendant does not use language that suggests that he is giving an opinion about the plaintiffs, rather he uses definitive language as if he is providing factual statements. The defendant's statements could be objectively verified. The defendant's statements contained in the Facebook posts in paragraphs 9, 10, 15, 17 and 18 of the complaint are statements of fact.

The defendant's statements were published to a third person. The defendant published his statements on his public Facebook page. The defendant admits in his affidavit that he made the statements to inform the public. It is clear that the defendant published his statements on Facebook for the public to see. [3]

The plaintiff argues that statements contained in the Facebook posts are defamation per se. To fall under the category of defamation per se, the plaintiff must demonstrate that the defamatory speech is either: "(1) statements that accuse a party of a crime involving moral turpitude or to which an infamous penalty is attached, [or] (2) statements that accuse a party of improper conduct or lack of skill or integrity in his or her profession or business and the statement is calculated to cause injury to that party in such profession or business." (Internal quotation marks omitted.) Id. at 646-47. Connecticut courts have clarified: "[M]oral turpitude ... [remains] a vague and imprecise term to which no hard and fast definition can be given.... A general definition ... is that moral turpitude involves an act of inherent baseness, vileness or depravity in the private and social duties which man

does to his fellowman or to society in general, contrary to the accepted rule of right and duty between man and law." (Internal quotation marks omitted.) *Silano* v. *Cooney*, 189 Conn. App. 235, 244 n.8, 207 A.3d 84 (2019). Some libelous statements are actionable per se so long as the libel is one which charges a crime which involves moral turpitude or to which an infamous penalty is attached. *Proto* v. *Bridgeport Herald Corp.*, supra, 136 Conn. 566.

***9** The defendant accuses the plaintiffs of committing crimes to the statements contained in the Facebook posts in paragraphs 9, 10, 15, 17 and 18 of the complaint. The defendant accuses the plaintiffs of committing the fraud, theft, Medicaid and Medicare fraud, perjury, identity theft; sexual assault; impersonation; fraud; and drug trafficking. The crimes hold severe penalties. The defendant also accuses the plaintiffs of not having the proper conduct or skill or integrity in their professions. Based on the facts and circumstances of the relationship between the parties, it is reasonable to believe that the statements were made to cause injury to the plaintiffs' business.

"When the defamatory words are actionable per se, the law conclusively presumes the existence of injury to the plaintiff's reputation". (internal quotation marks omitted) *Stevens*, supra, 220 Conn. App. at 646. Thus, the plaintiffs are not required to plead or prove any special damages or reputational harm. The plaintiffs have met their burden of demonstrating probable cause that they will prevail on the merits on their claims of defamation.

2. Intentional and Negligent Infliction of Emotional Distress

In counts two, three, six and seven, the plaintiffs set forth claims of intentional infliction of emotional distress and negligent infliction of emotional distress. A claim for intentional infliction of emotional distress requires proof: "(1) that the actor intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe." *Appleton* v. *Board of Education,* 254 Conn. 205, 210, 757 A.2d 1059 (2000). "Liability for intentional infliction of emotional distress requires conduct that exceeds all bounds usually tolerated by decent society.... Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.... Conduct on the part of the defendant that is merely insulting or displays bad manners or results in hurt feelings is insufficient to form the basis for an action based upon intentional infliction of emotional distress." (Citations omitted; internal quotation marks omitted.) Id., 210-11. Whether conduct is extreme and outrageous for purposes of a claim for intentional infliction of emotional distress is "initially a question for the court to determine." Id., 210.

To prove a claim for negligent infliction of emotional distress, the plaintiff must establish: "(1) the defendant's conduct created an unreasonable risk of causing the plaintiff emotional distress; (2) the plaintiff's distress was foreseeable; (3) the emotional distress was severe enough that it might result in illness or bodily harm; and (4) the defendant's conduct was the cause of the plaintiff's distress." *Carrol* v. *Allstate Ins. Co.*, 262 Conn. 433, 444, 815 A.2d 119 (2003).

The conduct of the defendant in writing the statements in the Facebook posts establishes probable cause for intentional and negligent infliction of emotional distress. Garcia avers that the defendant harassed her through the Facebook posts so much so that she filed a restraining order against the defendant. Docket Entry 114, Garcia Affidavit, ¶¶ 8-12. Garcia also avers that the content of the statements about criminal activity are false. Id. Similarly, Hussain avers that the defendant's statements on Facebook were harassing and threatening, causing Hussain to file for a civil protective order. Docket Entry 114, Hussain Affidavit, ¶¶ 5-10. Hussain also avers that the content of the statements about criminal activity are false. Id. There is also evidence that the defendant continued to post statements after the civil protective order and restraining order were put in place, which reasonably can establish both intentional and negligent infliction of emotional distress. The documents submitted together with the allegations in the complaint tend to establish conduct that was intended or known to be likely to cause severe emotional distress, that did cause severe emotional distress and was "extreme or outrageous" conduct, all necessary elements of intentional infliction of emotional distress. See *Gleason*, 319 Conn. at 406 n. 14.

***10** The documents submitted together with the allegations in the complaint establish that there is probable cause to believe that the plaintiffs will prevail on their claims for negligent infliction of emotional distress. The statements on Facebook were negligently posted. There is probable cause that the statements would foreseeably cause emotional distress severe enough that it might result in illness or bodily harm or that the defendant's conduct would cause the plaintiffs' distress.

The plaintiffs have met their burden of demonstrating probable cause that they will prevail on the merits on their claims of intentional infliction of emotional distress and negligent infliction of emotional distress.

3. Invasion of Privacy

In counts four and eight, the plaintiffs set forth claims for invasion of privacy. "To establish a false light invasion of privacy claim, the claimant must show that 'the false light in which [she] was placed would be highly offensive to a reasonable person, and ... the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which [she] would be placed.... The essence of a false light privacy claim is that the matter published concerning the [claimant] (1) is not true ... and (2) is such a major misrepresentation of [her] character, history, activities or beliefs that serious offense may reasonably be expected to be taken by a reasonable [person] in [her] position.' " *Borg v. Cloutier*, 200 Conn. App. 82, 109 (2020) (citations omitted).

Superior Courts have followed the Restatement commentary in determining whether the "publicity" element of a false light invasion of privacy claim is satisfied. *Karlen v. Saleeb*, Superior Court, judicial district of Stamford, Docket No. FST CV 21-5025649 S (February 1, 2024, *Krumeich, J.T.R.*):

> "3 Restatement (Second) Torts, Invasion of Privacy § 652E, comment a, pp. 394-95 (1977), incorporates the discussion on the difference between publication and publicity found in § 652D. 'Publication'... includes any communication by the defendant to a third person. 'Publicity'... means that the matter is made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge. The difference is not one of the means of communication ... It is one of a communication that reaches, or is sure to reach, the public ... The distinction ... is one between private and public communications.' 3 Restatement (Second) Torts, Invasion of Privacy § 652D, comment a, p. 384 (1977).' "

Accord, *Pearce v. Miele*, 2016 WL 785557*8 (Conn. Super. 2016) (Noble, J.) (and cases collected therein).

The court has already concluded that the defendant posted his statements on Facebook in the public forum, and the defendant does not contest this fact. Therefore, the defendant's statements were public communications. As to the remainder of the elements of the false light claim, the plaintiffs have submitted evidence that the statements are not true. Likewise, as discussed above, the defendant's statements relate to the plaintiffs committing crimes and to their professional behaviors. The plaintiffs have submitted evidence that these statements are major misrepresentations of their characters and that a reasonable person in their position would be offended if they were the subject of these statements. The plaintiffs have met their burden of demonstrating probable cause that they will prevail on the merits on their claims for invasion of privacy.

D. Attorney's Fees

***11** The plaintiffs seek an award of attorney's fees under § 52-196a (f) (2). Section 52-196a (f) (2) allows this court to award attorney's fees if it concludes that the special motion to dismiss was "frivolous and solely intended to cause delay". The defendant addressed this issue in his reply at docket entry 118.

Even though this court has denied the motion to dismiss, on this record, this court cannot find that the arguments were frivolous and solely intended to cause delay.

The motion to dismiss is denied.

All Citations

Not Reported in Atl. Rptr., 2026 WL 948918

Footnotes

1 The plaintiffs filed a request for leave to file an amended complaint and an amended complaint on November 26, 2025, almost a month after the motion to dismiss was filed. See Docket Entry 110. In the amended complaint, the plaintiffs sought to add address the defendant's arguments raised in the motion to dismiss by adding additional allegations. The Appellate Court has not addressed whether a complaint can be amended while a special motion to dismiss is pending. See Pryor v. Brignole, 231 Conn. App. 659, 666, n.7, 333 A.3d 1112 (2025). However, in *Pryor*, the court referred to the decision in *Birch Hill Recovery Center, LLC* v. *High Watch Recovery Center, Inc.*, Superior Court, judicial district of Litchfield, Docket No. CV-23-6034689-S (February 23, 2024, *Lynch, J.*) for the proposition that a complaint cannot be amended while a special motion to dismiss is pending. While *Birch Hill Recovery Center, LLC* was affirmed on other grounds a month after *Pryor* was decided, this court adopts the sound reasoning set forth in the *Birch Hill Recovery Center, LLC* superior court's decision relative to the amended complaint. This decision only addresses the original complaint filed at docket entry 100.32.

2 In support of his motion to dismiss, the defendant submitted copies of United States Postal Service tracking cards to the Department of Public Health, dated October 15, 2025, and October 21, 2025. The record before the court does not indicate what was sent to the Department of Public Health but whatever was sent was done during the pendency of this action and well after the defendant and the plaintiffs parted ways. Based on the record before it, the court is not presented with a situation where the defendant petitioned the government for suspected criminal activity or improper activity. See *Reid v. Harriman*, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. CV196083510S (October 28, 2019, *Welch, J.*).

3 The defendant claims that the statements contained in the Facebook posts are true, and claims truth as a special defense. The plaintiffs have denied all of the conduct, particularly the criminal conduct alleged by the defendant's statements. The plaintiffs have provided sworn statements that there was no identity theft. Docket Entry 114, Affidavit of Hussain, ¶¶ 22, 23. They refute that they used a “ghost doctor” to sign documents. Docket Entry 114, Affidavit of Hussain, ¶ 19; Affidavit of Shaikh, ¶¶ 20-21. The plaintiffs provided sworn statements that they have not defrauded any federal reimbursement programs, and that any money owed to the defendant was paid. Docket Entry 114, Affidavit of Garcia, ¶¶ 15-16; Affidavit of Hussain, ¶¶ 25, 30. The court finds that there is probable cause to find that the plaintiffs would defeat the defendant's special defense.

End of Document

2023 WL 1097731
Only the Westlaw citation is currently available.

Superior Court of Connecticut,
JUDICIAL DISTRICT OF HARTFORD AT HARTFORD.

K&W ENTERPRISES, LLC, d/b/a KIA of East Hartford
v.
Jadalyn DOUGLAS

DOCKET NO. HHD-CV-226153973-S
|
JANUARY 13, 2023

MEMORANDUM OF DECISION

Budzik, J.

***1** Before the court is the defendant Jadalyn Douglas' special motion to dismiss pursuant to General Statutes § 52-196a, Connecticut's anti-SLAPP [1] statute. Ms. Douglas entered into a confidential settlement agreement with the plaintiff K & W Enterprises, LLC d/b/a KIA of East Hartford (K & W) in which Ms. Douglas agreed not to publicly disparage K & W, a car dealership. Ms. Douglas posted a poor review of K & W's business practices on Google approximately one year prior to the date she entered into the settlement agreement. K & W alleges that Ms. Douglas' apparent failure to remove that review from Google is a breach of the parties' settlement agreement. Ms. Douglas argues that K & W's suit is subject to dismissal under § 52-196a because Ms. Douglas was simply exercising her free speech rights in a public forum (Google) on a matter of public concern (K & W's business practices). K & W responds that the underlying basis of its suit is not Ms. Douglas' exercise of any free speech rights, but her failure to abide by the terms of a settlement agreement. [2]

The court agrees with K & W. As part of the settlement agreement between the parties, Ms. Douglas waived her right to make disparaging public comments about K & W. Thus, K & W's complaint does not attack Ms. Douglas' right to make disparaging public comments about K & W; Ms. Douglas has already waived that right. Instead, K & W's complaint [3] seeks to enforce its understanding of the settlement agreement between the parties, specifically, that the terms of the settlement agreement obligate Ms. Douglas to remove a negative Google review made one year prior to the settlement agreement and that Ms. Douglas' apparent failure to do so constitutes a breach of the settlement agreement. [4] Although this appears to be an issue of first impression in Connecticut, other state courts that have considered the applicability of state anti-SLAPP laws to settlement agreements have found that those laws do not apply. As set forth below, this court agrees with the analysis of those state courts that have previously considered this issue and therefore denies Ms. Douglas' special motion to dismiss.

LEGAL STANDARD

"Connecticut's anti-SLAPP statute provides a mechanism for early dismissal of SLAPP suits by way of a special motion to dismiss." *Chapnick* v. *DiLauro*, 212 Conn. App. 263, 269, 275 A.3d 746 (2022); see also General Statutes § 52-196a (b). Section 52-196a (e) (3) provides in relevant part: "The court shall grant a special motion to dismiss if the moving party makes an initial showing, by a preponderance of the evidence, that the opposing party's complaint ... is based on the moving party's exercise of

its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, unless the party that brought the complaint ... sets forth with particularity the circumstances giving rise to the complaint ... and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint ....” “When ruling on a special motion to dismiss [filed pursuant to the anti-SLAPP statute], the court shall consider pleadings and supporting and opposing affidavits of the parties attesting to the facts upon which liability ... is based.” General Statutes § 52-196a (e) (2). “A special motion to dismiss filed pursuant to § 52-196a ... is not a traditional motion to dismiss based on a jurisdictional ground. It is, instead, a truncated evidentiary procedure enacted by our legislature in order to achieve a legitimate policy objective, namely, to provide for a prompt remedy.” *Elder* v. *Kauffman*, 204 Conn. App. 818, 824, 254 A.3d 1001 (2021).

***2** “In deciding a special motion to dismiss pursuant to § 52-196a, the court undertakes a two-prong burden shifting analysis. Under the first prong of the analysis, the moving party has the initial burden to show by a preponderance of the evidence that the opposing party's complaint falls within the scope of the statute ... Specifically, the plaintiff's claims must be based on the defendant's right to free speech, right to petition the government, or right to free association. Further, the defendant's exercise of his or her right must relate to a matter of public concern.” *Smith* v. *Supple*, Superior Court, judicial district of Hartford, Docket No. CV-21-6140309 (November 16, 2021, *Graham, J.T.R.*); see also *Chapnick* v. *DiLauro*, supra, 212 Conn. App. 269 (in deciding a special motion to dismiss, the trial court's initial task “involves a question of whether [the] alleged conduct falls within the ambit of the anti-SLAPP statute”).

FACTS

The parties’ pleadings and affidavits demonstrate the following facts as relevant to this memorandum of decision which, except where noted, are not in dispute.

K & W Enterprises, LLC d/b/a KIA of East Hartford (K & W) sells and leases KIA branded cars in East Hartford. In February of 2020, Jadalyn Douglas leased a car from K & W. Ms. Douglas initially was pleased with the service she received at K & W and posted a five-star review of K & W on Google. Nevertheless, by approximately March of 2020, Ms. Douglas came to believe that she was the victim of unfair and deceptive business practices by K & W. Ms. Douglas avers that she was unable to entirely delete the five-star review of K & W that she had previously posted on Google and, therefore, Ms. Douglas changed her Google review of K & W to a one-star review.

In August of 2020, Ms. Douglas and her father, Philip G. Douglas, sued K & W in Connecticut federal district court alleging various claims based in unfair trade practices and fraud (the federal suit). On March 29, 2021, Ms. Douglas, her father, and K & W entered into a confidential settlement agreement resolving the federal suit. Paragraph seven of the settlement agreement includes the following provision: “Confidentiality/Non-Disparagement .... The Douglases ... agree not to make any public statements of any kind nature or manner whatsoever, whether such statements are oral or written, on paper, on the internet, on social media, or on any consumer review sites, including, but not limited to, any manufacturer or seller of automobiles, or take any other act or actions which disparage K & W or HCA or cast them or any of them in a negative light. The term ‘disparage’ is defined as ‘to belittle, denigrate, deprecate or speak ill of.’ ” Paragraph eight of the settlement agreement also contains a mutual release of claims “both known and unknown ... from the beginning of the world to the date” of the settlement agreement.

Ms. Douglas received consideration as part of the settlement agreement. Ms. Douglas was represented by counsel when she signed the settlement agreement. Ms. Douglas does not contest the settlement agreement's enforceability or seek to be released from its terms. Indeed, Ms. Douglas affirmatively avers that she has complied with the terms of the settlement agreement, including its nondisparagement clause, and that she will continue to do so in the future. See Aff. of Jadalyn Douglas, Doc. No. 103.00, paragraph 34. Apart from the matters at issue in this lawsuit, Ms. Douglas does not allege that K & W has failed to perform its obligations under the settlement agreement.

K & W alleges that it learned of Ms. Douglas' one star review of K & W on March 1, 2022. K & W alleges that the continued existence of Ms. Douglas' one star review on Google and/or Ms. Douglas' failure to remove the review from Google is a violation of section seven of the settlement agreement.

LEGAL ANALYSIS

***3** "Given the sparse precedent interpreting Connecticut's newly enacted anti-SLAPP statute, courts have looked to decisions from other jurisdictions with similar laws, particularly California, for guidance." *Primrose Cos.* v. *McGee*, Superior Court, judicial district of Waterbury, Docket No. CV-21-6062747-S (August 26, 2022, *Pierson, J.*); *see* also *Pacheco Quevedo* v. *Hearst Corp.*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-CV-19-5021689-S (December 19, 2019, *Sommer, J.*). This is because "[t]he Connecticut version of the [anti-SLAPP] statute is modeled on language contained in California, Oregon, Texas, and Washington's anti-SLAPP statutes." *Smith* v. *Supple*, supra, Superior Court, Docket No. CV-21-6140309 (citing Conn. Joint Standing Committee Hearings, Judiciary, Pt. 8, 2017 Sess., p. 38–39). Here, the parties have pointed the court to no Connecticut case law addressing the applicability of Connecticut's anti-SLAPP law to litigants' responsibilities under a preexisting settlement agreement and the court's own research has uncovered no Connecticut case law directly on point. The court therefore looks to other states.

In *Middle-Snake-Tamarac Rivers Watershed District* v. *Stengrim*, 784 N.W.2d 834, 842 (2010) (*Stengrim*), the Minnesota Supreme Court addressed the applicability of Minnesota's anti-SLAPP law to a settlement agreement in which an individual, James Stengrim, agreed to "address no further challenges" to a flood management project in Minnesota's Red River Valley. The. water district subsequently filed suit alleging Mr. Stengrim violated the settlement agreement by making various statements intended to harm the project, by making repeated, burdensome data requests, and by engaging in other obstructionist actions. Id., 837. Mr. Stengrim moved to dismiss the water district's complaint on the basis of Minnesota's anti-SLAPP statute. Id., 838. In upholding the trial court's denial of Mr. Stengrim's motion to dismiss, the Minnesota Supreme Court held, "[p]reexisting legal relationships, such as those based on a settlement agreement where a party waives certain rights, may legitimately limit a party's public participation. It would be illogical to read [Minnesota's anti-SLAPP statute] as providing presumptive immunity to actions that a moving party may have contractually agreed to forgo or limit.... The underlying dispute here is essentially a contractual argument, and the district court had the authority to deny Stengrim's anti-SLAPP motion because the court determined it was at best premature. In a situation such as the one present here, a district court has the authority to deny a defendant's anti-SLAPP motion where a defendant has entered into a settlement agreement and contractually agreed not to hinder the establishment of a project, thereby waiving certain rights to public participation ...." (Citations omitted.) Id., 842.

Similarly, in *Alhambra* v. *D'Ausilio*, 193 Cal. App. 4th 1301, 1304, 123 Cal. Rptr. 3d 142 (2011), the City of Alhambra sued the former head of the local firefighter's union, Robert D'Ausilio, for breach of a settlement agreement in which Mr. D'Ausilio agreed to stop advocating on behalf of local firefighters. When Mr. D'Ausilio advocated that local firefighters join a demonstration against the city and participated in the demonstration himself, the city sued for breach of the settlement agreement. Id. In upholding the trial court's denial of a motion to dismiss under California's anti-SLAPP statute, the Court of Appeals for the Second District held that "the [c]ity's declaratory relief claim involves an actual dispute between the parties regarding the validity of a contract provision and the parties' rights and obligations under that contract provision. The declaratory relief claim arises from a contract dispute; it does not arise from actions taken by [Mr. D'Ausilio] in furtherance of his constitutional rights." Id., 1309. Other courts that have considered this issue have reached similar conclusions. See e.g., *Pennsbury Villages Associates, LLC* v. *McIntyre*, 608 Pa. 309, 11 A.3d 906, 915 (2011) (Holding Pennsylvania's anti-SLAPP law inapplicable to a dispute over a settlement agreement and holding that "where pre-existing legal relationships preclude a party from engaging in the activity protected by anti-SLAPP legislation, that party cannot claim immunity for actions taken in violation of its pre-existing legal obligation. Anti–SLAPP legislation will not shield a party from liability where a party 'waived the very constitutional right it seeks to vindicate.' "); *Johannesen* v. *Eddins*, 2011 IL App (2d) 110108, 963 N.E.2d 1061, 1067 (2011) (citing to *Stengrim* with approval and holding that "[w]e can see no reason why a party cannot waive rights under [Illinois' anti-SLAPP] Act based on a preexisting legal relationship"); cf. *Chapnick* v. *DiLauro*, supra, 212 Conn. App. 273 (upholding trial court denial of motion

to dismiss under Connecticut's anti-SLAPP law in suit grounded in nuisance and stating "[n]ot every matter with secondary legal aspects involves a matter of public concern").

***4** This court finds the analysis of *Stengrim*, *D'Ausilio*, and the other courts cited herein to be persuasive and applies it to the facts of this case. Here, Ms. Douglas does not dispute that she waived her right to speak disparagingly about K & W as part of the settlement agreement. [5] Thus, the underlying issue in this matter is not whether K & W is improperly attempting to silence Ms. Douglas in the exercise of her First Amendment rights; Ms. Douglas has already agreed as part of the settlement agreement to be silenced. The court holds that the dispute between the parties is not based on the exercise of Ms. Douglas' free speech rights, but, instead, centers on the proper interpretation of a settlement agreement entered into by the parties and, more particularly, whether the continued existence of a Google review posted by Ms. Douglas a year before entering into the settlement agreement and/or Ms. Douglas' refusal or inability to remove that Google review, constitutes a violation of the settlement agreement. The determination of these issues is based on the proper interpretation of the settlement agreement at issue, not the "exercise of ... constitutional conduct in connection with a matter of public concern." *Chapnick* v. *DiLauro*, supra, 212 Conn. App. 273.

CONCLUSION

For all the foregoing reasons, the special motion to dismiss is denied.

All Citations

Not Reported in Atl. Rptr., 2023 WL 1097731

Footnotes

1 Strategic Litigation Against Public Participation.

2 In addition to the defenses asserted in the instant motion, Ms. Douglas argues, *inter alia*, that her poor Google review of K & W predates her promise not to disparage K & W by more than a year and, therefore, she did not violate the settlement agreement.

3 For clarity, the court expresses no view on the merits of K & W's complaint, or its interpretation of the parties' settlement agreement.

4 K & W also argues that Ms. Douglas' statements on Google are not statements made in a public forum or on a matter of public concern as those terms are used in § 52-196a. Because the court resolves this motion to dismiss on other grounds, the court need not decide these issues.

5 "[A]n agreement that restricts speech ... constitutes a valid waiver of those rights, as long as the waiver was intelligent and voluntary." *Perricone* v. *Perricone*, 292 Conn. 187, 210, 972 A.2d 666 (2009). Ms. Douglas does not contend that her waiver of her right to disparage K & W was not knowing and voluntary.

2022 WL 4008736
Only the Westlaw citation is currently available.

Superior Court of Connecticut,
J.D. OF DANBURY AT DANBURY.

Daniel MULVIHILL
v.
Kara SPINNATO a/k/a Kara Callahan

DOCKET NO. DBD CV-22-5018189-S
|
SEPTEMBER 2, 2022

MEMORANDUM OF DECISION SPECIAL MOTION TO DISMISS #101

Brazzel-Massaro, J.

INTRODUCTION

***1** The plaintiff filed this action as a self-represented party with a complaint dated April 12, 2022. The plaintiff named Kara Spinnato a/k/a Kara Callahan ("Kara") as the defendant. The plaintiff is a real estate agent. (Complaint ¶16). He was contacted by the defendant, met with her and gave information concerning the sale of her uncle's property at 31 Skyline Drive, Danbury Connecticut. The parties met in November 2021 and discussed the listing of the home. The defendant thereafter listed the home with another agent and not the plaintiff. At some time after the sale and closing of the property, the defendant wrote a review on Zillow Services about the services of the defendant which he alleges was defamatory and libelous. He seeks damages as a result of the alleged review. The defendant has filed a Special Motion to Dismiss in accordance with General Statutes § 52-196a dated July 7,2022. The plaintiff filed an objection to the motion to dismiss dated July 11, 2022. Thereafter, the defendant filed a supplemental memorandum in support of the motion dated August 5, 2022 and then on August 9, 2022 filed corrected affidavits. The plaintiff submitted an affidavit after argument dated August 12, 2022 in response to statements in his argument. The plaintiff and counsel appeared for argument on August 8, 2022.

DISCUSSION

General Statutes § 52-196a, colloquially referred to as the anti-SLAPP statute, [1] was enacted to protect parties that have spoken out on matters of public concern from meritless litigation intended to chill free speech among other rights. See Lafferty v. Jones, 336 Conn. 332, 382 n.36, 246 A.3d 429 (2020), cert. denied, —— U.S. ——, 141 S. Ct. 2467 (2021). It allows for a party to file a special motion to dismiss in a case that is based on the party's exercise of certain constitutional rights, specifically the right of free speech, right to petition the government, and the right of association, in connection with a matter of public concern. General Statutes § 52-196a (b).

The court conducts a two-part analysis when deciding a special motion to dismiss. First, the court considers whether the moving party has made "an initial showing, by a preponderance of the evidence, that the opposing party's complaint ... is based on the moving party's exercise of its right to free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern ..." General Statutes § 52-196a (c) (3). The court then considers whether "the party that brought the complaint ... and demonstrates to the court that there is

probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint....” General Statutes § 52-196a (c) (3).

A. Matter of Public Concern

***2** Turning to the first step of the analysis, § 52-196a (a) (2) defines the right of free speech as “communicating, or conduct furthering communication, in a public forum on a matter of public concern.”

California courts have held that “[w]eb sites accessible to the public.... are public forums for purposes of the anti-SLAPP statute.” (Internal quotation marks omitted.) *Nygard, Inc.* v. *Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1039, 72 Cal. Rptr. 3d 210 (2008). California courts have analogized Internet websites to an electronic public bulletin board “open to literally billions of people all over the world.” *Chaker* v. *Mateo*, 209 Cal. App. 4th 1138, 1146, 147 Cal. Rptr. 3d 496 (2012); see also *Wilbanks* v. *Wolk*, 121 Cal. App. 4th 883, 897, 17 Cal. Rptr. 3d 497 (2004) (public bulletin board “is public because it posts statements that can be read by anyone who is interested, and because others who choose to do so, can post a message through the same medium that interested persons can read”).

Zillow is a participatory website where the public may read and write reviews of an individual real estate property or agent on that agent's profile page. “Additionally, Zillow.com provides information to the general public intended to help the public buy and sell real estate or choose a real estate agent. The public has a significant interest in the conduct of real estate professionals, who often conduct their business in the capacity of a fiduciary.... [T]he profile pages on the Zillow.com web site, like a public bulletin board, constitute a medium for public discussion of significant real estate issues reaching a large community.” (Citation omitted.) *Kruger* v. *Daniel*, No. 43155-6-ii, 2013 WL 5339143, at *4, 2013 Wash. App. LEXIS 2201, at *11 (Wash. App. Sept. 17, 2013) (warning not to use real estate agent's services posted on Zillow satisfied the first step of anti-SLAPP analysis because “[a]lthough one may dispute whether ... statement itself was of ‘widespread’ public interest, the topic of real estate services most certainly is”).

Based upon the above, the Zillow site which was utilized by the defendant is a public forum for purposes of the anti-SLAPP claim.

Section 52-196a (a) (1) defines a matter of public concern as “an issue related to (A) health or safety, (B) environmental, economic or community well-being, (C) the government, zoning and other regulatory matters, (D) a public official or public figure, or (E) an audiovisual work.”

The defendant argues that the plaintiff is a real estate agent who is licensed by the State of Connecticut. Thus, the defendant argues that the plaintiff's acting in this capacity of a regulated, licensed professional, he would fall within the test of public concern because of the claim of unethical activity within his profession. However, the complaint filed by the plaintiff does not allege that he was a real estate agent working for the defendant or performing any specific business dealings. In fact, the plaintiff alleges that the defendant ignored his email and listed her property with another real estate office and agent. (Complaint ¶ 4,5). The facts of this case and the personal contacts are not at all similar to the case of *Rockoff* relied upon by the defendant, in which the plaintiff was a real estate agent. *Rockoff* v. *Annulli*, Superior Court, judicial district of Hartford, Docket No. 20-6122116S (July 2, 2020, *Taylor, J.*) There, (the plaintiff asserted that the real estate transaction involved a private matter, and the defendant's speech about this private real estate transaction involved matters of public concern; namely a claim of unethical and criminal behavior by a regulated professional); see also *Noble* v. *Hennessey*, Superior Court, judicial district of New London, Docket No. CV-20-6045166-S (January 12, 2021, *Calmar, J.*) (finding grievance complaint to be on a matter of public concern because it alleged unethical behavior by attorney, which is regulated profession). Thus, as noted above the complaint clearly alleges that the plaintiff had not been hired by defendant in his capacity as a real estate agent but rather that he merely met with her to give his professional opinion on the potential sale. Therefore, the plaintiff was not acting in a fiduciary capacity. Thus, this claim is not one that involves a matter of public concern.

B. Merits of the Complaint

***3** Step two of the analysis involves shifting the burden to the plaintiff if the defendant satisfies the burden under § 52-196a. Although the court has determined that the matter is not of public concern, the court will analyze the question of probable cause in an effort to respond to all of the arguments in the special motion to dismiss.

"A defamatory statement is defined as a communication that tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him ... To establish a prima facie case of defamation,[2] the plaintiff must demonstrate that: (1) the defendant published a defamatory statement; (2) the defamatory statement identified the plaintiff to a third person; (3) the defamatory statement was published to a third person; and (4) the plaintiff's reputation suffered injury as a result of the statement." (Citation omitted; footnote added; internal quotation marks omitted.) *Cweklinsky* v. *Mobil Chemical Co.*, 267 Conn. 210, 217, 837 A.2d 759 (2004). "[A] complaint for defamation must, on its face, specifically identify what allegedly defamatory statements were made, by whom, and to whom...." (Internal quotation marks omitted.) *Chertkova* v. *Connecticut General Life Ins. Co.*, Superior Court, judicial district of New Britain, Docket No. CV-98-0486346-S (July 12, 2002, *Berger, J.*) aff'd, 76 Conn. App. 907, 822 A.2d 372 (2003).

"To be actionable, the statement in question must convey an objective fact, as generally, a defendant cannot be held liable for expressing a mere opinion." (Internal quotation marks omitted.) *NetScout Systems, Inc.* v. *Gartner, Inc.*, 334 Conn. 396, 410, 223 A.3d 37 (2020).

"Context is a vital consideration in any effort to distinguish a nonactionable statement of opinion from an actionable statement of fact. As [the Supreme court] previously has recognized, this distinction between fact and opinion cannot be made in a vacuum ... for although an opinion may appear to be in the form of a factual statement, it remains an opinion if it is clear from the context that the maker is not intending to assert another objective fact but only his personal comment on the facts which he has stated.... Thus, while this distinction may be somewhat nebulous ... [t]he important point is whether ordinary persons hearing or reading the matter complained of would be likely to understand it as an expression of the speaker's or writer's opinion, or as a statement of existing fact." (Emphasis in original; internal quotation marks omitted.) Id., 412, 223 A.3d 37.

In *Rockoff* v. *Annulli*, supra, 70 Conn. L. Rptr. 41, the court found that comments made about the plaintiff realtor by the defendant on a public on-line forum "[involved] a somewhat hyperbolic tone in an on-line, evaluative review and [did] not include claims of specific, verifiable facts that would, otherwise, militate toward finding them to be objective, defamatory declarations. The defendant concluded her review, however, by asserting specific facts that she was privy to at the closing.... stating that she 'learned that he had given our deposit checks to his client and is not hold them in escrow. That is illegal!' This declaration is an objective statement of fact, alleging criminal and unethical conduct, militating toward finding her review of [the plaintiff] to include an objective, defamatory statement."

***4** The statement made by the defendant in this action was, "Mr. Mulvihill worked with me on an opportunity to be our agent for my uncle's home. Mr. Mulvihill could not seem to handle being professional ... he told me he'd advise listing the home we were selling $100K less than we actually got when it sold within 48 hours with another agent. I have a feeling he was never going to list it rather bring in a cash buying friend (house was a big rehab project). I have never dealt with such a shady individual. Buyer and Seller beware!!" This statement by the defendant in this action is most certainly an objective statement of fact which leads to allegation of unethical conduct at the least and thus it does rise to the level of an objective, defamatory statement. The plaintiff has met his burden of establishing with probable cause that he will succeed on the merits of his defamation claim.

CONCLUSION

Based upon the above, the Special Motion to Dismiss is denied.

All Citations

Not Reported in Atl. Rptr., 2022 WL 4008736

Footnotes

1 "SLAPP is an acronym for 'strategic lawsuit against public participation,' the distinctive elements of [which] are (1) a civil complaint (2) filed against a nongovernmental individual (3) because of their communications to government bodies (4) that involves a substantive issue of some public concern.... The purpose of a SLAPP suit is to punish and intimidate citizens who petition state agencies and have the ultimate effect of chilling any such action." (Internal quotation marks omitted.) *Lafferty* v. *Jones*, 336 Conn. 332, 337 n.4, 246 A.3d 429 (2020), cert. denied, —— U.S. ——, 141 S. Ct. 2467, (2021).

2 "Defamation is comprised of the torts of libel and slander. Defamation is that which tends to injure the reputation in the popular sense; to diminish the esteem, respect, goodwill or confidence in which the plaintiff is held, or to excite adverse, derogatory, or unpleasant feelings or opinions against him.... Slander is oral defamation.... Libel ... is written defamation." (Internal quotation marks omitted.) *Lowe* v. *Shelton*, 83 Conn. App. 750, 765, 851 A.2d 1183, cert. denied, 271 Conn. 915, 859 A.2d 568 (2004).

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Superior Court of Connecticut,
JUDICIAL DISTRICT OF WATERBURY.

PRIMROSE COMPANIES, INC., et al.
v.
Matt MCGEE

Docket No. UWY-CV-21-6062747-S
|
AUGUST 26, 2022

MEMORANDUM OF DECISION RE SPECIAL MOTION TO DISMISS (No. 101)

PIERSON, J.

STATEMENT OF THE CASE

***1** "Dedication to principles of freedom of speech requires a balance of competing interests. On the one hand, false publications are and should be suspect. The concept of vigorous debate and freedom from any inhibition, even self-censorship, must be preserved, but certainly not at the price of unlimited destruction of individual reputations." *Jensen* v. *Times-Mirror*, 647 F. Supp. 1525, 1526 (D. Conn. 1986).

This is an action in defamation. According to the plaintiff, [1] it is engaged primarily in the business of purchasing and developing of real property, including in the city of Shelton, Connecticut. Further, according to the plaintiff, in or about May 2005, it began working on redevelopment projects on Canal Street in Shelton, to help revitalize the downtown area, "all of which required collaboration with local and state officials, for the benefit of the local community."

The plaintiff alleges that on or about October 1, 2008, a nonparty to this action—Canal Street Associates, LLC (Canal Street)—became the record owner of certain real estate in Shelton known as 267 Canal Street a/k/a the Star Pin Complex (property). The plaintiff also alleges that as a result of Canal Street's failure to pay real property taxes on the property, the city of Shelton brought a foreclosure action, bearing Docket No. AAN-CV-15-6017760-S, in which case the defendants of record were Canal Street and Alegna Corporation. A judgment of foreclosure by sale entered in January 2016. The plaintiff claims that it had no ownership interest in the property until 2017, when the city of Shelton sold the foreclosed property to Primrose Companies Realty, LLC.

The plaintiff alleges that as of September 2021, the defendant herein—Matt McGee—was a resident of Shelton, "running for political office in which he was campaigning to be elected to the Board of Aldermen" (BOA). The purportedly defamatory statements of the defendant at issue were made during his campaign for the BOA.

On August 30, 2021, the Shelton Herald newspaper published a letter from the defendant, addressed to the editors, which appeared in the opinion section of the newspaper. The letter was entitled, "BOA must stop giving gifts to developers." The letter begins: "Shelton needs smart development that brings good paying jobs and accessible housing while protecting the open space and trails system that Shelton residents take so much pride in. Shelton does not need more retail stores or 'luxury' apartment

buildings. This is the sentiment I hear from numerous residents throughout the 3rd Ward, and it is one that I wholeheartedly agree with. As your next Alderman from the Long Hill School District, I intend to bring a level of oversight that currently does not exist on our Board of Aldermen. The need for additional oversight is clear when looking at 3 BOA decisions that were made this past term ... 3) The approval of the sale of City-owned property at 267 Canal St. to the same developer who had failed to pay taxes on the property years prior, leaving taxpayers on the hook for hundreds of thousands in unpaid back-taxes. Had I served this past term I would have voted a resounding no on all three of these proposals because they are good for developers but bad for Shelton." The defendant concluded, "[i]t's time for new leadership and a fresh perspective at City Hall. We deserve elected officials who will work to meet the needs of the people who elected them – not the financial needs of developers. As your next Alderman I will always put your quality of life interests first and foremost when assessing any sale of City-owned land and any further development in Shelton. That is my promise to you."

***2** On September 9, 2021, the Shelton Herald published a responsive letter, authored by John Anglace, Jr., president of the BOA. In this letter, Anglace stated that the defendant's contention—that the property was sold to the same developer who had failed to pay taxes on the property years prior, thereby leaving taxpayers on the hook for hundreds of thousands—was "factually incorrect." According to Anglace, the plaintiff "never previously owned this property and therefore could never have failed to pay taxes on it. The BOA has given no gifts to developers. On the contrary, we are thankful that Shelton has people willing to invest their money in our downtown renaissance."

The defendant responded with an op-ed in the Shelton Herald that was published on September 16, 2021. In it, the defendant referred to his prior request that the BOA "stop giving gifts to developers." Moreover, he stated that the property "was sold to the same developer who previously failed to pay property taxes.... [T]he previous owner of [the property] was [Canal Street], which is in part owned by the same developer who owns Primrose Companies.... [T]he pay-to-play history at City Hall during [BOA President Anglace's] time in office between public officials and local developers is no secret, and it is because of this reality that we see outright gifts to developers like these approved without question by our current BOA. It is long past time that we elect people from our community who are willing to stand up for and represent the concerns of our community, not the concerns of a few wealthy developers."

The day after it was published, on September 17, 2021, the defendant shared his op-ed piece on a public Facebook group named "Shelton Taxpayers Support Education." Accompanying the piece was the defendant's message: "I am running for the Board of Aldermen to bring transparency to the process! Development has long been a rigged game in Shelton and the BOA has sat complicit. Not any longer."

On September 20, 2021, the plaintiff's president, John N. Guedes, wrote a letter to the editor of the Shelton Herald, in which he accused the defendant of making "false claims," thereby thrusting the plaintiff directly into the debate. Guedes continued: "I started my redevelopment plans on Canal Street in the downtown in 2003. I am the initiator and creator of the Shelton River Front Master Plan of Development for Canal Street.... Having dedicated the last 18 years to downtown, I can assure [the defendant] that no one has paid to play. [The defendant's] political ambitions must not be a license to make false claims. [The defendant] made statements regarding [the property] and my firm Primrose Companies that are incorrect.... In 2014 ... [the plaintiff] transferred its interest [in the property] back to [a prior owner]. Contrary to [the defendant's] claim, [the plaintiff] had no ownership interest in [the property] at the time that the City foreclosed for back taxes." What Guedes did not say, and which is uncontradicted in the record, is that Guedes—the plaintiff's president—was a principal member of Canal Street, the entity foreclosed upon for failure to pay taxes in connection with the property. See Def. Aff. (No. 102), ¶ 4.

On September 21, 2021, the defendant shared the Guedes letter on the defendant's Facebook page and commented, "I'm just a guy running for an unpaid position in city government because I want to help and serve my hometown. This developer has and will continue to have a lot of money to make. A vested financial interest." In response to a comment to the defendant's September 21, 2021 Facebook posting—in which the commentator made specific reference to the plaintiff—the defendant remarked, "[m]ilk the public for all they got, buy land for dirt cheap, then make a fortune in part by stretching some local building regulations and completely ignoring others. They certainly have a track record!"

***3** According to the plaintiff's operative, one-count complaint, the defendant's statements "in the article and on social media were false and made [wilfully], recklessly, or negligently. The [defendant's] libelous actions constituted defamation by innuendo because the false statement that [the plaintiff] had a property foreclosed on then bought it back from the City suggests that [the plaintiff] was engaged in a 'pay-to-play' scheme with local politicians." Pl. Compl. (No. 107.00), ¶¶ 18, 19. The plaintiff alleges that the defendant acted with actual malice. Id., ¶ 21.

The plaintiff claims that as a result of the defendant's statements, it suffered a loss of general damages including actual damages "for reputational or material loss...." Id., ¶ 22. It also claims to have suffered a loss of special damages, "including but not limited to a loss of business profit and loss of employment." Id., ¶ 23. Finally, the plaintiff claims that the defendant acted wilfully, wantonly, or with a reckless disregard for the truth, thereby entitling the plaintiff to punitive damages.

The defendant responded to the plaintiff's complaint by filing a special motion to dismiss pursuant to General Statutes § 52-196a (Nos. 101 and 102). In his motion and supporting memorandum of law, the defendant claims that the statements at issue involve the defendant's protected rights and, further, that the plaintiff cannot demonstrate probable cause of success on the merits of its claim.

The defendant opposes the motion (No. 103), arguing that this suit is not aimed at chilling the defendant's first amendment rights, as the plaintiff is a private business that is not in the public eye. The plaintiff further argues that the defendant's statements constitute libel per se and that he acted with actual malice in making them.

For the reasons that follow, the court concludes that the defendant's special motion to dismiss must be granted.

DISCUSSION

I

A

The defendant's special motion to dismiss is filed pursuant to Connecticut's anti-SLAPP statute, § 52-196a. As explained by our Supreme Court, "SLAPP is an acronym for 'strategic lawsuit against public participation,' the distinctive elements of [which] are (1) a civil complaint (2) filed against a nongovernment individual (3) because of their communications to government bodies (4) that involves a substantive issue of some public concern.... The purpose of a SLAPP suit is to punish and intimidate citizens who petition state agencies and have the ultimate effect of chilling any such action." *Lafferty* v. *Jones*, 336 Conn. 332, 337 n.4, 246 A.3d 429 (2020), cert. denied, —— U.S. ——, 141 S. Ct. 2467, 209 L. Ed. 2d 529 (2021).

"In the 1980s, the term 'SLAPP' entered the public lexicon as a catchy acronym for Strategic Lawsuits Against Public Participation.... [T]he term applied to lawsuits often filed by developers and other large construction companies against citizen-activists who objected to alleged environmental abuses. The ... phenomenon [was identified] as part of a 'new and very disturbing trend'—citizens being sued merely for exercising their First Amendment rights.... In other words, SLAPP lawsuits seek to limit public participation.... These lawsuits often assert such causes of action as defamation, malicious prosecution, interference with existing contractual relations, abuse of process, or conspiracy to commit these wrongs.... The idea behind so-called 'anti-SLAPP' laws was that there should be a procedural mechanism in place to protect citizens who have been sued by wealthy corporate actors merely to intimidate and silence those citizens for exercising their First Amendment freedoms of petition or speech. Originally, the statutes were designed to provide protection primarily to the citizen-activist who opposed the unfriendly environmental activities of a construction company or large developer. Today, however, SLAPP suits reach a much broader

range of cases." (Footnotes omitted.) D. Hudson, Jr., "Anti-SLAPP Coverage and the First Amendment: Hurdles to Defamation Suits in Political Campaigns," 69 Am. U. L. Rev. 1541, 1542-44 (2020).

***4** Connecticut's anti-SLAPP statute, which is of fairly recent vintage, [2] provides in part: "In any civil action in which a party files a complaint, counterclaim or cross claim against an opposing party that is based on the opposing party's exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, such opposing party may file a special motion to dismiss the complaint, counterclaim or cross claim." General Statutes § 52-196a (b).

"The purpose of Connecticut's anti-SLAPP statute is to protect defendants who are sued for exercising their right of free speech...." (Internal quotation marks omitted.) *Quevedo* v. *Hearst Corp.*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-19-5021689-S (December 19, 2019, *Sommer, J.*); see also *Chapnick* v. *DiLauro*, 212 Conn. App. 263, 271, 275 A.3d 746 (2022) ("[t]he anti-SLAPP statute concerns the exercise of the right of free speech, the right to petition, and the right of association"); *26 Cedar Street Associates, LLC* v. *Healthtrax Fitness & Wellness Clinic Inc.*, Superior Court, judicial district of Hartford, Docket No. CV-17-6085183-S (November 24, 2021, *Sicilian, J.*) ("[s]ection 52-196a ... was enacted to protect parties that have spoken out on matters of public concern from meritless litigation intended to chill free speech among other rights"). As suggested above, an action in defamation—such as the one asserted by the plaintiff here—is a prototypical SLAPP suit.

B

In keeping with the anti-SLAPP laws of other jurisdictions, Connecticut's statute provides an expedited procedure for obtaining dismissal of an action. [3] "Any party filing a special motion to dismiss shall file such motion not later than thirty days after the return date of the complaint, or the filing of a counterclaim or cross claim.... The court shall stay all discovery upon the filing of a special motion to dismiss.... The court shall conduct an expedited hearing on a special motion to dismiss.... The court shall rule on a special motion to dismiss as soon as practicable." General Statutes § 52-196a (c), (d), (e) (1), and (e) (4).

As noted above, under Connecticut law, the expedited procedure is initiated by means of a special motion to dismiss. *Chapnick* v. *DiLauro*, supra, 212 Conn. App. 269 ("Connecticut's anti-SLAPP statute provides a mechanism for early dismissal of SLAPP suits by way of a special motion to dismiss"); *Elder* v. *Kauffman*, 204 Conn. App. 818, 823-24, 254 A.3d 1001 (2021) ("[w]here a party files a complaint ... against an opposing party that is based upon the opposing party's exercise of its right of free speech, right to petition the government, or right of association under the federal or state constitution in connection with a matter of public concern, *the opposing party may file a special motion to dismiss*" [emphasis added; internal quotation marks omitted]); see also *Day* v. *Dodge*, Superior Court, judicial district of New London, Docket No. CV-18-6035362-S (January 25, 2019, *Knox, J.*) (67 Conn. L. Rptr. 750, 755 n.4) ("legislatures enact anti-SLAPP statutes, such as § 52-196a, to allow courts to dismiss frivolous and vexatious actions").

***5** "A special motion to dismiss filed pursuant to § 52-196a ... is not a traditional motion to dismiss based on a jurisdictional ground. It is, instead, a truncated evidentiary procedure enacted by our legislature in order to achieve a legitimate policy objective, namely, to provide a for prompt remedy.... It is, in this respect, similar to a motion for summary judgment." (Citation omitted.) *Elder* v. *Kauffman*, supra, 204 Conn. App. 824.

"When ruling on a special motion to dismiss, the court shall consider pleadings and supporting and opposing affidavits of the parties attesting to the facts upon which liability or a defense, as the case may be, is based." General Statutes § 52-196a (e) (2). "The court shall grant a special motion to dismiss if the moving party makes an initial showing, by a preponderance of the evidence, that the opposing party's complaint, counterclaim or cross claim is based on the moving party's exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, unless the party that brought the complaint, counterclaim or cross claim sets forth with particularity the circumstances giving rise to the complaint, counterclaim or cross claim and

demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint, counterclaim or cross claim." General Statutes § 52-196a (e) (3).

"The legal idea of probable cause is a bona fide belief in the existence of the facts essential under the law for the action and as such would warrant a man of ordinary caution, prudence and judgment, under the circumstances, in entertaining it.... Proof of probable cause is not as demanding as proof by preponderance of the evidence." (Citation omitted; internal quotation marks omitted.) *Elder* v. *Kauffman*, supra, 204 Conn. App. 825.

II

As reflected in the language of § 52-196a (e) (3), "[i]n deciding a special motion to dismiss pursuant to § 52-196a, the court undertakes a two-prong burden shifting analysis. Under the first prong of the analysis, the moving party has the initial burden to show by a preponderance of the evidence that the opposing party's complaint falls within the scope of the statute." *Reid* v. *Harriman*, Superior Court, judicial district of Fairfield, Docket No. CV-19-6083510-S (October 28, 2019, *Welch, J.*). "[Claims against the defendant] fall within the scope of the statute ... if [the defendant was] exercising [his] right of free speech[, right to petition the government, or right of association] as defined in the statute, on a matter of public concern, when [he] made the statements and omissions attributed to [him]." *Graves* v. *Chronicle Printing Co.*, Superior Court, judicial district of Tolland, Docket No. CV-18-5010056-S (November 7, 2018, *Farley, J.*) (67 Conn. L. Rptr. 442, 446).

For purposes of Connecticut's anti-SLAPP statute, the " '[r]ight of free speech' means communicating, or conduct furthering communication, in a public forum on a matter of public concern...." General Statutes § 52-196a (a) (2). " 'Right to petition the government' means (A) communication in connection with an issue under consideration or review by a legislative, executive, administrative, judicial or other governmental body, (B) communication that is reasonably likely to encourage consideration or review of a matter of public concern by a legislative, executive, administrative, judicial or other governmental body, or (C) communication that is reasonably likely to enlist public participation in an effect to effect consideration of an issue by a legislative, executive, administrative, judicial or other governmental body...." General Statutes § 52-196a (a) (3). Finally, a "matter of public concern" is defined as "an issue related to (A) health or safety, (B) environmental, economic or community well-being, (C) the government, zoning and other regulatory matters, (D) a public official or public figure, or (E) an audiovisual work...." General Statutes § 52-196a (a) (1).

***6** "Given the sparse precedent interpreting Connecticut's newly enacted anti-SLAPP statute, courts have looked to decisions from other jurisdictions with similar laws, particularly California, for guidance." (Internal quotation marks omitted.) *Noble* v. *Hennessey*, Superior Court, judicial district of New London, Docket No. CV-20-6045166-S (January 12, 2021, *Calmar, J.*) (citing *Quevedo* v. *Heart Corp.*, supra, Superior Court, Docket No. CV-19-5021689-S).

III

Although "[t]he Legislature set a high bar for [a] defendant to hurdle before a court may terminate a lawsuit peremptorily, without discovery ... by requiring proof by a preponderance of the evidence that the suit was based on [the] defendant's exercise of protected rights"; (internal quotation marks omitted) *Lawrence* v. *Chambers*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-20-5022942-S (September 21, 2020, *Krumeich, J.T.R.*); in this case, the court has little difficulty concluding that the defendant meets his initial burden of demonstrating that the allegedly defamatory statements are within the purview of our anti-SLAPP statute.

To begin, all of the defendant's statements were made in public fora. See, e.g., *Balla* v. *Hall*, 59 Cal. App. 5th 652, 673, 273 Cal. Rptr. 3d 695 (2021) (letter to editor, newspaper campaign advertisement, and Facebook posts all public fora for purposes of California's anti-SLAPP statute); *Lawrence* v. *Chambers*, supra, Superior Court, Docket No. CV-20-5022942-S (newspaper is

public forum); *Cevetillo* v. *Lang*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-19-6031687-S (December 13, 2019, *Tyma, J.*) ("defendant's communications were made in a public forum, *including social media*" [emphasis added]); *Schelling* v. *Lindell*, 942 A.2d 1226, 1231 (Me. 2008) (Maine's anti-SLAPP statute encompasses "a letter, written to a newspaper, that is designed to expand the public consideration of a controversial issue recently considered by the Legislature"); *Klamath River Development Co.* v. *Wisbauer*, Court of Appeal of California, Third District, No. C041958 (September 20, 2004, *Butz, J.*) (unpublished opinion) ("[l]etters to the editor on issues of public interest contribute to an 'uninhibited, robust, and wide-open' debate on such issues, which is at the very heart of First Amendment principles"); *Alves* v. *Hometown Newspapers, Inc.*, 857 A.2d 743, 753-54 (R.I. 2004) ("making public complaints to newspapers on matters of public concern is protected activity within the meaning of the anti-SLAPP statute").

Furthermore, all of the defendant's statements involve matters of public importance. Although the plaintiff tries to cast the controversy as one involving private affairs that are not of public interest,[4] this attempt is unavailing. The plaintiff's argument cannot be reconciled with the allegation—in its own operative complaint—that in 2005, it began working on redevelopment projects in Shelton, including on Canal Street, to help revitalize the downtown area, "*all of which required collaboration with local and state officials, for the benefit of the local community.*" (Emphasis added.) Pl. Compl. (No. 107), ¶ 3. Further problematic for the plaintiff is the fact that Guedes, as the plaintiff's president, purposefully and affirmatively entered the debate started by the defendant by writing his own letter to the editor of the Shelton Herald, in which he represented, inter alia, that he initiated and developed a plan for Canal Street that Guedes described as "the catalyst for the redevelopment of Downtown." He further represented: "I can assure ... the citizens of Shelton that myself and the others now developing downtown do not pay to play."

***7** Moreover, an alleged "pay to play" scheme involving a land developer and a municipal board of aldermen, whether express or implied, involves matters of public concern and importance. Under Connecticut's anti-SLAPP statute, a "matter of public concern" includes, without limitation, economic well-being, the government, public officials, and zoning and other regulatory matters. General Statutes § 52-196a (a) (1); see also *Krans* v. *Wicklund*, 332 Wis. 2d 316, 797 N.W.2d 934 (Wis. Ct. App. 2011) (unpublished opinion) (court concluding that dispute concerning land development raised at town board meeting was public controversy); *Vice* v. *Kasprzak*, 318 S.W.3d 1, 15-16 (Tex. App. 2009) (editorial, flyer, and letter to editor, all alleged to be defamatory and involving ongoing controversy between homeowner's association and developer, including statement that association board members were "giving away" association money to developer, involved statements of "public nature"); *Alves* v. *Hometown Newspapers, Inc.*, supra, 857 A.2d 754 ("letters to the editor of a newspaper voicing [an] opinion on a public school construction project are prototypical examples of a protected exercise of free speech in a public forum on an issue of public concern"); *White* v. *Berkshire-Hathaway*, 195 Misc.2d 605, 759 N.Y.S.2d 638, 640 (N.Y. Sup. Ct. 2003), aff'd, 5 A.D.3d 1083, 773 N.Y.S.2d 664 (2004) (in case involving real estate developer who secured public funding to finance projects, holding that "[the] plaintiff's involvement in the nursing home industry and in the revitalization of the community ... were clearly disputes affecting ... the general public").

In addition, the defendant's letters to the editor constitute petitioning activity. To qualify as petitioning activity, a statement need not be submitted directly to a government body or agency. As observed by the Supreme Judicial Court of Maine in connection with that state's anti-SLAPP law, "the right to petition the government cannot be limited to speech concerning issues currently awaiting specific action before a public body.... [It] ... extend[s] to statements that may have the effect of bringing an issue not currently under consideration into consideration or review by any governmental body." *Schelling* v. *Lindell*, supra, 942 A.2d 1231; see also *Noble* v. *Hennessey*, supra, Superior Court, Docket No. CV-20-6045166-S (observing that under Massachusetts law, if "a statement has the potential or intent to redress a grievance, or directly or indirectly to influence, inform, or bring about governmental consideration of the issue, it can qualify for protection as petitioning activity"); *Gaudette* v. *Mainely Media, LLC*, 160 A.3d 539, 542 (Me. 2017) (under Maine anti-SLAPP statute, "petitioning activity" includes "a letter to the editor published in a newspaper where the letter was designed to expand the public consideration of a controversial issue recently addressed by the Legislature and where the letter writer was the party seeking dismissal pursuant to the anti-SLAPP statute" [internal quotation marks omitted]). This is because "writing a letter to the editor provides a vehicle for communicating a message about public matters to a large and interested community." (Internal quotation marks omitted.) *Alves* v. *Hometown Newspapers, Inc.*, supra, 857 A.2d 753.

The defendant has demonstrated, by a preponderance of the evidence, that the plaintiff's complaint is based upon the defendant's exercise of his right of free speech and right to petition the government, in connection with a matter of public concern. See General Statutes § 52-196a (e) (3).

IV

"Once the moving party makes the initial showing by a preponderance of the evidence, [t]he court shall grant a special motion to dismiss ... unless the party that brought the complaint ... sets forth with particularity the circumstances giving rise to the complaint ... and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint...." (Internal quotation marks omitted.) *Reid* v. *Harriman*, supra, Superior Court, Docket No. CV-19-6083510-S (citing General Statutes § 52-196a [e] [3]). For the reasons that follow, and considering all valid defenses, the plaintiff fails to demonstrate probable cause that it will prevail on the merits of its defamation claim.

A

i

***8** "[T]o establish a prima facie case of defamation at common law, the plaintiff must prove that (1) the defendant published a defamatory statement; (2) the defamatory statement identified the plaintiff to a third person; (3) the defamatory statement was published to a third person; and (4) the plaintiff's reputation suffered injury as a result of the statement." (Internal quotation marks omitted.) *Borg* v. *Cloutier*, 200 Conn. App. 82, 105-06, 239 A.3d 1249 (2020).

" 'Libel ... is written defamation.' (Internal quotation marks omitted.) *Mercer* v. *Cosley*, 110 Conn. App. 283, 297, 955 A.2d 550 (2008). 'Libel per se, on the other hand, is a libel the defamatory meaning of which is apparent on the face of the statement and is actionable without proof of actual damages.... Two of the general classes of libel which, it is generally recognized, are actionable per se are (1) libels charging crimes, and (2) libels which injure a [person] in [their] profession and calling.' (Citations omitted; internal quotation marks omitted.) *Lega Siciliana Social Club, Inc.* v. *St Germaine*, 77 Conn. App. 846, 852-53, 825 A.2d 827, cert. denied, 267 Conn. 901, 838 A.2d 210 (2003). Where the plaintiff is a public figure, the plaintiff must also prove 'that the defamatory statement was made with actual malice, such that the statements, when made, [was] made with actual knowledge that it was false or with reckless disregard of whether it was false.' (Internal quotation marks omitted.) *Gleason v. Smolinski*, 319 Conn. 394, 431, 125 A.3d 920 (2015)." *Gifford v. Taunton Press, Inc.*, Superior Court, judicial district of Danbury, Docket No. CV-18-6028897-S (July 11, 2019, *D'Andrea, J.*).

"A defamatory statement is defined as a communication that tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.... But it is not enough that the statement inflicts reputational harm. To be actionable, the statement in question must convey an objective fact, as generally, a defendant cannot be held liable for expressing a mere opinion.... A statement can be defined as factual if it relates to an event or state of affairs that existed in the past or present and is capable of being known.... In a libel action, such statements of fact usually concern a person's conduct or character.... An opinion, on the other hand, is a personal *comment* about another's conduct, qualifications or character that has some basis in fact.... It should surprise no one that the distinction between actionable statements of fact and nonactionable statements of opinion is not always easily articulated or discerned.... The difficulty arises primarily because the expression of an opinion may, under certain circumstances, reasonably be understood to imply the existence of an underlying basis in an unstated fact or set of facts.... Context is a vital consideration in any effort to distinguish a nonactionable statement of opinion from an actionable statement of fact. As this court previously has recognized, this distinction between fact and opinion cannot be made in a vacuum ... for although an opinion may appear to be in the form of a factual

statement, it remains an opinion if it is clear from the *context* that the maker is not intending to assert another objective fact but only his personal comment on the facts which he has stated.... Thus, while this distinction may be somewhat nebulous ... the important point is whether ordinary persons hearing or reading the matter complained of would be likely to understand it as an expression of the speaker's or writer's opinion, or as a statement of existing fact.... A central feature of the analysis undertaken by virtually every court called on to distinguish opinion from fact involves a careful examination of the overall context in which the statement is made." (Brackets omitted; citations omitted; emphasis in original; internal quotation marks omitted.) *NetScout Systems, Inc.* v. *Gartner, Inc.*, 334 Conn. 396, 410-412, 223 A.3d 37 (2020). "The determination of whether a statement is opinion or rhetorical hyperbole as opposed to a factual representation is a question of law for the court." (Brackets omitted; internal quotation marks omitted.) Id., 417, 223 A.3d 37.

***9** As noted by our Supreme Court in *NetScout Systems, Inc.*, the context in which a purportedly defamatory statement is made is of significance. In this case, the defendant's statements (1) were made in connection with the defendant's campaign for public office, namely, the Shelton BOA and (2) are expressly and implicitly critical of the BOA, and implicitly critical of Anglace, the BOA president. In this context, the defendant's speech is entitled to broad protection. See, e.g., *Dougherty* v. *Philadelphia Newspapers, LLC*, Superior Court of Pennsylvania, Docket No. 1635 EDA 2014 (October 14, 2015, *Bowes, J.*) ("[O]f critical importance herein is the fact that the article was an editorial about whether a union official who was running for political office was a worthy candidate. This context is precisely where the First Amendment right to free speech enjoys its fullest and most urgent application because that amendment is fashioned to assure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people.... The right to comment on candidates for elections protects the paramount public interest in a free flow of information to the people concerning public officials, their servants.... Anything that might bear upon a candidate's fitness for office, including private or public matters, and especially any malfeasance or criminal conduct, is fair game for political commentary." [Citations omitted; internal quotation marks omitted.]); see also *Miller* v. *Fayette County*, United States District Court, Docket No. 2:15CV1590 (TFM) (W.D. Pa. April 18, 2016) ("[c]ontext matters, especially when the surrounding circumstances of a statement are those of a heated political debate, where certain remarks are necessarily understood as ridicule or vituperation, or both, but not as descriptive of factual matters" [internal quotation marks omitted]).

ii

Mindful of the political context in which the defendant's statements were made, the court turns to a consideration of whether the plaintiff has demonstrated probable cause that it will prevail in its claim of defamation against the defendant.

To begin, the court observes that—with the exception of the September 16, 2021 op-ed—the defendant's statements do not identify the plaintiff by name. Presumably, it is for this reason that the plaintiff alleges affirmatively that the defendant's "libelous actions constituted defamation by innuendo...." Pl. Compl., ¶ 19. Whether or not Connecticut recognizes an action for libel by innuendo, [5] to the extent the plaintiff contends that the defendant's statements constitute libel per se, the plaintiff's claim fails because libel per se cannot be based on innuendo. *Hamzi* v. *Goldstein*, Superior Court, judicial district of Danbury, Docket No. CV-96-0324501-S (February 4, 1999, *Eveleigh, J.*) ("a determination of libel per se is to be made upon the face of the publication itself and *cannot be varied or enlarged by innuendo*" [emphasis added]); see also *Lyons* v. *Heid*, Superior Court, judicial district of Fairfield, Docket No. CV-94-0311175-S (May 29, 1998, *Stevens, J.*) (22 Conn. L. Rptr. 45, 48) ("[The defendant's statements] do not even specifically identify the plaintiff by name.... [T]he only way possible these statements could be viewed as being libelous would be as a result of extrinsic information known by the reader of the article, and therefore, they cannot be viewed as being libelous per se."); *Stanwich* v. *Swift*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-03-0195684-S (November 3, 2004, *Jennings, J.*) (statement does not constitute libel per se with respect to plaintiff "because it does not identify the plaintiff as the perpetrator ... and the court will not speculate as to any innuendo to the identity of the alleged ... abuser").

***10** Moreover, the plaintiff fails to demonstrate probable cause that it will prevail on its libel claim because the court concludes that the defendant's statements are substantially true, or otherwise constitute hyperbole or opinion that is not actionable in defamation.

The court begins with those portions of the defendant's statements that are objectively factual. See *NetScout Systems, Inc.* v. *Gartner, Inc.*, supra, 334 Conn. 410 ("[t]o be actionable the statement in question must convey an objective fact, as generally, a defendant cannot be held liable for expressing a mere opinion" [internal quotation marks omitted]). In determining which statements are objectively factual, as opposed to merely opinion, the court considers: "(1) whether the circumstances in which the statement is made should cause the audience to expect an evaluative or objective meaning; (2) whether the nature and tenor of the actual language used by the declarant suggests a statement of evaluative opinion or objective fact; and (3) whether the statement is subject to objective verification." Id., 414, 223 A.3d 37.

Of the defendant's statements, only the following are objectively factual: (1) the defendant's assertion, in his August 30, 2021 letter to the editor, that the BOA approved "the sale of City-owned property at 267 Canal St. to the same developer who had failed to pay taxes on the property years prior, leaving taxpayers on the hook for hundreds of thousands in unpaid back taxes"; and (2) the defendant's statement, in the defendant's September 16, 2021 op-ed, that the property "was sold to the same developer who previously failed to pay property taxes.... [T]he previous owner of [the property] was [Canal Street], which is in part owned by the same developer who owns Primrose Companies." These statements suggest objective facts—including whether the property was sold to a developer who failed to pay property taxes—which are subject to objective verification.

The defendant argues that these statements cannot support a claim in libel because they are substantially true. "Truth is a defense to a claim of defamation and *a defendant is not liable if the statements are substantially true. Strada* v. *Connecticut Newspapers, Inc.*, [supra,] 193 Conn. ... 320-22, ... *Mercer* v. *Cosley*, [supra,] 110 Conn. App. 283, 955 A.2d 550 .... 'It is not necessary for the defendant to prove the truth of every word of the libel. If he succeeds in proving that the main charge, or gist, of the libel is true, he need not justify statements or comments which do not add to the sting of the charge or introduce any matter by itself actionable.... The issue is whether the libel, as published, would have a different effect on the reader than the pleaded truth would have produced.' (Quotation and citations omitted.) *Goodrich* v. *Waterbury Republican-American, Inc.*, 188 Conn. 107, 113, 448 A.2d 1317 (1982)." (Emphasis added.) *Graves* v. *Chronicle Printing Co.*, supra, 67 Conn. L. Rptr. 449.

The court finds that the defendant's statements regarding the unidentified entity that failed to pay back taxes are substantially true. It is undisputed that Canal Street owned the property; that it failed to pay taxes on the property; and that as a result, the city foreclosed on the property. It is also undisputed that Guedes was involved with both Canal Street and the plaintiff as an owner and/or in management. The gravamen of the plaintiff's claim of factual inaccuracy turns on its claim that it was different corporate entity—not the plaintiff—that failed to pay back taxes.

***11** Given the failure of the defendant to identify a specific "developer" in the August 30, 2021 letter; his clarifying statement in the September 16, 2021 op-ed that Canal Street "is in part owned by the same developer who owns [the plaintiff]"; and further, the undisputed fact that Canal Street was at least partly owned by the an individual who serves as the plaintiff's president, the court finds the defendant's statements concerning the sale of the property to be substantially true. Given Guedes' involvement with both entities, absolute factual accuracy was unnecessary to the main charge or gist of the defendant's statements and would not have resulted in a different effect on the reader. As a result, the court concludes that the defendant's statements were substantially true for purposes of the plaintiff's defamation claim.

The defendant's statements concerning the failure to pay back taxes aside, the remaining statements are in the nature of hyperbole or opinion, or they are directed at the BOA. For example, the defendant's references to a "pay-to-play history at City Hall" and the "rigged game" of development in Shelton are opinions; the BOA's purported "outright gifts to developers ... approved without question" is directed to the BOA. All of these statements were offered in the context of a political campaign and are insufficiently factual to constitute defamatory statements. There is no implication that the defendant has knowledge of facts not disclosed; the only facts alleged by the defendant in connection with these statements are those pertaining to a failure to pay back taxes, which, as noted above, the court concludes were substantially true for purposes of the plaintiff's claim. As a result, the plaintiff has failed to demonstrate probable cause that it will prevail on its claim of defamation against the defendant.

B

In addition, the plaintiff fails to demonstrate probable cause that it will prevail on its claim because it fails to introduce sufficient evidence of actual malice on the part of the defendant. The plaintiff is required to demonstrate actual malice because the court concludes that, with respect to the subject matter of the defendant's statements, the plaintiff is a limited purpose public figure.

As observed by our Superior Court, "[i]n *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 94 S. Ct. 2997, 41 L.Ed.2d 789 (1974), the [United States] Supreme Court distinguished between two types of public figures, commonly referred to as 'general purpose' public figures and 'limited purpose' public figures. The court explained that, '[i]n some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts. More commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues.' " *Jones* v. *New Haven Register, Inc.*, 46 Conn. Supp. 634, 643, 763 A.2d 1097. "Determining whether an individual is a public figure—and thus subject to the actual malice analysis—is a question of law for the court to decide." *Michel* v. *NYP Holdings, Inc.*, 816 F.3d 686, 702 (11th Cir. 2016); accord *Krans* v. *Wicklund*, supra, 332 Wis. 2d 316, 797 N.W.2d 934.

"It is no answer to the assertion that one is a public figure to say, truthfully, that one [does not] choose to be. It is sufficient ... that [a party] voluntarily engaged in a course that was bound to invite attention and comment." (Internal quotation marks omitted.) *Rosanova* v. *Playboy Enterprises, Inc.*, 580 F.2d 859, 861 (5th Cir. 1978). "[A] person can be drawn into a public controversy based on his status, position, or association to the public controversy." (Internal quotation marks omitted.) *Green Group Holdings, LLC* v. *Schaeffer*, United States District Court, Docket No. 16-00145-CG-N (Southern D. Ala. October 13, 2016).

***12** "[A] plaintiff may be considered a limited purpose public figure when the person becomes influential in a single issue ... or when the person has thrust himself to the forefront of a particular public controversy in order to influence the resolution of the issue involved.... *A real estate developer may be a limited purpose public figure* ...." (Citations omitted; emphasis added.) *Horowitz v. Mannoia*, 10 Misc.3d 467, 802 N.Y.S.2d 917, 921 (2005). More specifically, "*developers who significantly participate in the process of seeking recommendations and approvals from public agencies for rezoning and development are public figures' under a First Amendment analysis, even though such plaintiffs did not want any controversy over their applications.*" (Emphasis added.) *Kensington Land Co.* v. *Zelnick*, 95 Ohio Misc.2d 45, 706 N.E.2d 1279 (Ohio Com. Pl. 1998); see also *Clardy* v. *Cowles Publishing Co.*, 81 Wn. App. 53, 56, 912 P.2d 1078 (1996) (holding that individual who "spearheaded the Mission Springs development, the biggest planned unit development ever proposed for Spokane County," was a limited purpose public figure as a result of his involvement in the project).

In this case, the plaintiff voluntarily injected itself into a controversy and invited public attention to its views with respect to a matter of public concern. The court finds that the plaintiff is a limited purpose public figure for purposes of this case. "When, as here, the plaintiff is a public figure, he cannot recover unless he proves by clear and convincing evidence that the defendant published the defamatory statement with actual malice, i.e., with 'knowledge that it was false or with reckless disregard of whether it was false or not.' " *Jones* v. *New Haven Register, Inc.*, supra, 46 Conn. Supp. 648 (citing *New York Times Co.* v. *Sullivan*, [376 U.S. 254, 279-80, 84 S. Ct. 710, 11 L.Ed.2d 686 (1964)] and *Masson* v. *New Yorker Magazine, Inc.*, 501 U.S. 496, 510, 111 S. Ct. 2419, 115 L. Ed. 2d 447 [1991]); see also *Vice* v. *Kasprzak*, supra, 318 S.W.3d 15 ("The question in a libel case brought by a public figure ... is whether statements made in such a context forfeit constitutional protection by the falsity of some of the factual statements made and the defamation of the plaintiff.... [A] public official or public figure bears the burden of proving actual malice by clear and convincing evidence." [Citations omitted.]).

"A higher stone in the protective wall of constitutional speech is the requirement that malice ... be proved with convincing clarity." *Jensen* v. *Times-Mirror*, supra, 647 F. Supp. 1527. " 'The Supreme Court requires proof of actual malice by "convincing clarity," which the Connecticut Supreme Court has interpreted as requiring that the "the probability that [the facts asserted] are true or exist is substantially greater than the probability that they are false or do not exist.' " *Dongguk* [*University*] v. *Yale*

[*University*], 734 F.3d 113, 123 (2d Cir. 2013) (quoting *New York Times Co.*, [supra,] 376 U.S., 285, and *Dacey v.* [*Connecticut*] *Bar Assn.*, 170 Conn. 520, 537, 368 A.2d 125 [1976]) (internal citation omitted). 'Clear and convincing proof is "highly probable" and "leaves no substantial doubt.' " Id. (quoting *Holbrook* v. *Casazza*, 204 Conn. 336, 358, 528 A.2d 774 [1987], [cert. denied, 484 U.S. 1006, 108 S. Ct. 699, 98 L. Ed. 2d 651 (1988)])." *Grande* v. *Hartford Board of Education*, United States District Court, Docket No. 3:19CV00184 (KAD) (D. Conn. January 21, 2021,).

In light of the court's conclusion that the plaintiff is a limited public purpose figure for purposes of this litigation, it must prove, by clear and convincing evidence, actual malice on the part of the defendant. Here, it bears observing that the plaintiff does not contest that it must prove actual malice in the circumstances of this case. In fact, in its operative complaint, the plaintiff alleges affirmatively that the defendant's statements were made with actual malice. Pl. Compl. (No. 107.00), ¶ 21.

***13** "[A]ctual malice requires a showing that a statement was made with knowledge that it was false or with reckless disregard for its truth.... A negligent misstatement of fact will not suffice; the evidence must demonstrate a purposeful avoidance of the truth." (Internal quotation marks omitted.) *Crismale* v. *Walston*, 184 Conn. App. 1, 11, 194 A.3d 301 (2018). The plaintiff's conclusory allegations of willfulness, wantonness, and recklessness aside, the record is devoid of evidence of actual malice on the part of the defendant.

V

For the foregoing reasons, the defendant's special motion to dismiss must be granted. Section 52-196a (f) (1) reads: "If the court grants a special motion to dismiss under this section, the court shall award the moving party costs and reasonable attorney's fees, including such costs and fees incurred in connection with the filing of the special motion to dismiss." The foregoing language "mandates an award of reasonable attorney's fees to a party who files a special motion to dismiss which is granted under Connecticut's anti-SLAPP statute, § 52-196a." *Cronin* v. *Pelletier*, Superior Court, judicial district of Tolland, Docket No. CV-18-6014395-S (September 30, 2019, *Sferrazza, J.*) (69 Conn. L. Rptr. 750). "[T]he reasonable attorney's fees award provisions of § 52-196a (f) (1) [encompass] *all* work performed by defense counsel arising from the case and not merely the work done in conjunction with the special motion to dismiss." (Emphasis in original.) Id. A hearing will be conducted to consider an award of costs and reasonable attorney's fees as mandated by § 52-196a (f) (1).

CONCLUSION

For the foregoing reasons, the defendant's special motion to dismiss (No. 101) is GRANTED. On or before September 16, 2022, the defendant shall submit proof of the fees and costs he seeks to recover; on or before September 30, 2022, the plaintiff shall file its objection to the recovery of costs and fees, if any. Thereafter, the court will schedule a hearing concerning the award of reasonable attorney's fees and costs in connection with the granting of this motion.

It is so ORDERED.

All Citations

Not Reported in Atl. Rptr., 2022 WL 3712636

Footnotes

1 As the plaintiffs, Primrose Companies, Inc., Primrose Companies Realty, LLC, and Primrose Development, LLC, refer to themselves collectively in their operative complaint in the singular, as "the 'Plaintiff,' " the court will do so here.

2 The law took effect on January 1, 2018. See Public Act 17-71, § 1.

3 "These statutes provide an expedited procedural process for defendants to rid themselves of frivolous litigation. This expedited procedure usually includes a stay of discovery that forces a court to decide a special motion to dismiss within a specific time frame." (Footnotes omitted.) D. Hudson, Jr., supra, 69 Am. U. L. Rev. 1544-45.

4 In its opposition brief, the plaintiff contends that it is "not in the public eye" and that the defendant's statements "about the performance of contractual obligations or other private interests are not statements related to an issue of public interest." PL Opp. Br. (No. 103), p. 1. The court is not persuaded.

5 In *Strada* v. *Connecticut Newspapers, Inc.*, 193 Conn. 313, 314, 477 A.2d 1005 (1984), our Supreme Court considered a state senator's claim of libel by innuendo against a newspaper, based on an article published by the defendant newspaper, which the plaintiff claimed "caused his defeat in the 1978 election and ... caused him to suffer substantial pecuniary loss, injured his name and reputation, diminished his ability to practice law and his effectiveness as an elected public official, and caused his family great emotional distress and embarrassment." The *Strada* court affirmed the trial court's entry of summary judgment in favor of the defendant, based, in part, on the trial court's holding that "there can be no libel by innuendo if the challenged communication is true and concerns public officers and public affairs even though a false implication may reasonably be drawn by the public." (Footnote omitted; internal quotation marks omitted.) Id., 315, 477 A.2d 1005. Based on *Strada*, several Superior Court decisions have held that Connecticut recognizes libel by innuendo. See, e.g., *Graves* v. *Chronicle Printing Co.*, Superior Court, judicial district of Tolland, Docket No. CV-18-5010056-S (November 7, 2018, *Farley, J.*) (67 Conn. L. Rptr. 442, 449) ("Connecticut does appear to recognize a claim for libel by innuendo" [citing *Strada* v. *Connecticut Newspapers, Inc.* supra, 323]); *Beebe* v. *Beebe*, Superior Court, judicial district of New London at Norwich, Docket No. 103684 (October 16, 1995, *Austin, J.*) ("Connecticut recognizes a cause of action for libel by innuendo or omission as long as there [exist] false statements which cause the innuendo"); *Woodcock* v. *Journal Publishing Co., Inc.*, Superior Court, judicial district of Tolland, Docket No. 42904 (June 18, 1991, *Dunn, J.*) (4 Conn. L. Rptr. 192) (denying motion to strike claim in libel by innuendo "on the ground that a cause of action for libel by innuendo or omission is not recognized in Connecticut").

By contrast, in *IN Energy Solutions, Inc.* v. *Realgy, LLC*, 114 Conn. App. 262, 277 n.8, 969 A.2d 807 (2009), our Appellate Court noted that "the communications specified by [the plaintiff] do not actually identify [the plaintiff] by name. In fact, most of the alleged defamation is, in [the plaintiff's] own words, 'implied.' *This court has rejected claims of 'defamation by innuendo.'* " (Emphasis added.)

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2020 WL 4333864

Superior Court of Connecticut,
Judicial District of Hartford at Hartford.

Kevin ROCKOFF et al.
v.
Shelby ANNULLI

HHDCV206122116
|
July 2, 2020

Mark H. Taylor, Judge

I

BACKGROUND

***1** The defendant, Shelby Annulli, has filed a special motion to dismiss this defamation action pursuant to General Statutes § 52-196a, based upon her right to free speech. The plaintiffs, Kevin Rockoff and Rockoff Realty, LLC, have filed an objection, proffering evidence that at least one of the defendant's defamatory remarks is false, in which she accused the plaintiff, Kevin Rockoff, of illegal behavior in an online review.

The pleadings and record reveal the following, salient claims of the parties. See General Statutes § 52-196a(e)(2). The defendant purchased a home in Glastonbury in 2019. During the listing and sales process leading to the closing, the plaintiffs represented the sellers as realtors. After the closing on her new home, the defendant published a lengthy, negative review of Mr. Rockoff on "yelp," a pubic on-line forum, based upon her experiences with him during the real estate transaction. She stated that Mr. Rockoff "is a train wreck" who is "disorganized and lacks the knowledge required for a real estate transaction." She continued by asserting that he "did not uphold his fiduciary obligation to his client by making many careless mistakes ... and claimed to be more of a hobbies realtor." She concluded by stating that although the plaintiff was not at the closing, she "learned that he had given our deposit checks to his client and did not hold them in escrow. That is illegal!" Apparently, the sellers had breached their purchase and sale agreement and refused to comply with unidentified obligations under the contract, "because they already had our money."

II DISCUSSION

A

General Statutes § 52-196a

General Statutes § 52-196a provides for a special motion to dismiss a defamation action, when it is based upon a defendant's right to free speech, *inter alia*. General Statutes § 52-196a(b) provides, in relevant part: "In any civil action in which a party files a complaint, counterclaim or cross claim against an opposing party that is based on the opposing party's exercise of its

right of free speech ... in connection with a matter of public concern, such opposing party may file a special motion to dismiss the complaint, counterclaim or cross claim."

General Statutes § 52-196a(e)(3) sets forth shifting burdens in evaluating such motions, beginning with the moving parties' burden of production and persuasion, by a preponderance of the evidence. The statute provides, in relevant part: "The court shall grant a special motion to dismiss if the moving party makes an initial showing, by a preponderance of the evidence, that the opposing party's complaint, counterclaim or cross claim is based on the moving party's exercise of its right of free speech ... under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern ..."

In this case, the defendant asserts that her statements on "yelp" involve the exercise of her right to free speech on a matter of public concern. The statute defines the "right of free speech" as "communicating, or conduct furthering communication, in a public forum on a matter of public concern." General Statutes § 52-196a(a)(2). The statute also defines a "matter of public concern" as "an issue related to (A) health or safety, (B) environmental, economic or community wellbeing, (C) the government, zoning and other regulatory matters, (D) a public official or public figure, or (E) an audiovisual work." General Statutes § 52-196a(a)(1).

***2** If the court concludes that the statements at issue involve the exercise of free speech on a matter of public concern, the statutory burden then shifts to the party alleging defamatory conduct, whose burden of persuasion is by the lower evidentiary standard of probable cause, as follows: "unless the party that brought the complaint, counterclaim or cross claim sets forth with particularity the circumstances giving rise to the complaint, counterclaim or cross claim and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint, counterclaim or cross claim." § 52-196a(e)(3).

B

The Defendant's Claim

The defendant is the moving party under the statute and has the burden of showing, by a preponderance of the evidence, that the plaintiff's complaint is based upon her right to free speech on a matter of public concern. The legal question presented by the facts and circumstances of the case is whether the defendant was engaged in protected free speech.

The defendant's review of the plaintiff, Mr. Rockoff, assailed him as an incompetent professional realtor, calling him "a train wreck ... [who] lacks the knowledge required for a real estate transaction ... making many careless mistakes ... and ... [as] more of a hobbies realtor." She went on to question his professional ethics by asserting that he "did not uphold his fiduciary obligation to his client ..." culminating in her statement that he engaged in highly unethical behavior and had engaged in criminal misconduct, because she learned "that he had given our deposit checks to his client and did not hold them in escrow. That is illegal!"

The accusation made, if true, involves unethical and illegal behavior and, if proven beyond a reasonable doubt, is punishable as a misdemeanor in our state. General Statutes § 20-324k(b) requires realtors to maintain escrow or trust accounts and to deposit funds received "in the course of his real estate business and in connection with any transaction ... including, but not limited to, any down payment, earnest money, deposit ... or other money to be held by him in trust ... within three banking days ..." Importantly, General Statutes § 20-324k(e) provides that a person found guilty of a wilfull violation of this professional, statutory duty "shall be fined not more than one thousand dollars or imprisoned not more than six months or both."

Returning to the dismissal statute, speech involving a "matter of public concern" includes issues of "economic or community wellbeing ... and other regulatory matters ..." § 52-196a(a)(1). This would appear to include unethical behavior alleged against a regulated professional. As to an allegation of illegal behavior, "[i]t is well established that [t]he commission of crime, prosecutions resulting from it, and judicial proceedings arising from the prosecutions ... are without question events of legitimate

concern to the public ... Indeed, [p]ublic allegations that someone is involved in crime generally are speech on a matter of public concern." *Gleason v. Smolinski,* 319 Conn. 394, 415, 125 A.3d 920 (2015).

Although the plaintiff asserts that the real estate transaction involved a private matter, the defendant's speech about this private real estate transaction involved matters of public concern; namely, a claim of unethical and criminal behavior by a regulated professional. The court therefore concludes that speech involving allegations of criminal violations by licensed professionals, as a regulatory matter involving economic or community wellbeing, are matters of public concern. On the other hand, "there is no dispute that the subject matter of these statements [involving criminal behavior] is defamatory per se because they charge crimes punishable by imprisonment ..." *Gleason v. Smolinski, supra*, 319 Conn. 435.

***3** The defendant appears to rely exclusively upon the claim that her speech involved matters of public concern, in support of her motion to dismiss. Her analysis of First Amendment rights in the context of claims of defamation, however, is incomplete.

C

The Plaintiff's Rebuttal

The procedural posture of the case now turns to the plaintiff, to "set forth with particularity the circumstances giving rise to the complaint, counterclaim or cross claim and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint ..." § 52-196a(e)(3). The proper analysis of defamation and one's right to free speech, however, are somewhat nuanced and are analyzed differently, depending upon the nature of the speech and the status of the defamed person. The court will begin with an analysis of the elements of defamation, and then how that analysis applies, specifically, to private persons engaged in speech on matters of public concern.

"At common law, [t]o establish a prima facie case of defamation, the plaintiff must demonstrate that: (1) the defendant published a defamatory statement; (2) the defamatory statement identified the plaintiff to a third person; (3) the defamatory statement was published to a third person; and (4) the plaintiff's reputation suffered injury as a result of the statement ... A defamatory statement is defined as a communication that tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him ... But it is not enough that the statement inflicts reputational harm. To be actionable, the statement in question must convey an objective fact, as generally, a defendant cannot be held liable for expressing a mere opinion ... A statement can be defined as factual if it relates to an event or state of affairs that existed in the past or present and is capable of being known ... In a libel action, such statements of fact usually concern a person's conduct or character ... An opinion, on the other hand, is a personal *comment* about another's conduct, qualifications or character that has some basis in fact." (Emphasis in original; citation omitted; internal quotation marks omitted.) *NetScout Systems, Inc. v. Gartner, Inc.,* 334 Conn. 396, 410-11, 223 A.3d 37 (2020). [1]

In *NetScout Systems, supra*, the Supreme Court evaluated several formulae that other jurisdictions employ in drawing the difficult distinction between defamatory declarations of objective fact and nonactionable opinion. "Without stripping these formulations of their nuance, they can be summarized as requiring analysis of three basic, overlapping considerations: (1) whether the circumstances in which the statement is made should cause the audience to expect an evaluative or objective meaning; (2) whether the nature and tenor of the actual language used by the declarant suggests a statement of evaluative opinion or objective fact; and (3) whether the statement is subject to objective verification." *Id.*, 414.

***4** In evaluating so-called "ratings" cases such as the present case, the Supreme Court in *NetScout Systems* additionally stated that "[l]iability for [defamation] may attach, however, when a negative characterization of a person is coupled with a clear but false implication that the author is privy to facts about the person that are unknown to the general reader. If an author represents that he has private, [firsthand] knowledge which substantiates the opinions he expresses, the expression of opinion becomes as

damaging as an assertion of fact ... The case law in this area also makes it clear that an opinion that is based on the opinions of others does not imply defamatory facts and, therefore, is not actionable." *NetScout Sysems, Inc. v. Gartner, Inc., supra*, 334 Conn. 416-17. In evaluating the facts in the present matter, the context of the statement and whether it was based upon hearsay or the opinion of another person are unaddressed in the record.

Based upon these evaluative standards, many of the comments made by the defendant in her review of Mr. Rockoff are best categorized as opinions, such as he's "a train wreck ... disorganized and lacks the knowledge required for a real estate transaction[,] did not uphold his fiduciary obligation to his client by making many careless mistakes ... and claimed to be more of a hobbies realtor." These comments involve a somewhat hyperbolic tone in an on-line, evaluative review and do not include claims of specific, verifiable facts that would, otherwise, militate toward finding them to be objective, defamatory declarations. The defendant concluded her review, however, by asserting specific facts that she was privy to at the closing, perhaps hearsay or the opinion of another person, stating that she "learned that he had given our deposit checks to his client and did not hold them in escrow. That is illegal!" This declaration is an objective statement of fact, alleging criminal and unethical conduct, militating toward finding her review of Mr. Rockoff to include an objective, defamatory statement.

Verification of an objective declaration of fact is critical in determining whether a statement is defamatory, because a truthful declaration may defame someone's reputation, but is not actionable. "It is well settled that for a claim of defamation to be actionable, the statement must be false ... and under the common law, truth is an affirmative defense to defamation ... the determination of the truthfulness of a statement is a question of fact for the jury." (Citations omitted; internal quotation marks omitted.) *Gleason v. Smolinski, supra*, 319 Conn. 430-31.

Although the defendant made a defamatory declaration, per se, by accusing Mr. Rockoff of criminal behavior, his claim of defamation must then be analyzed in the context of the defendant's constitutional right to freedom of speech. "Beyond these common-law principles, there are numerous federal constitutional restrictions that govern the proof of the tort of defamation, the applicability of which varies with "(a) the status of the plaintiff as a public or private figure, and (b) whether the subject of the speech is a matter of public or private concern. Thus, there are four possibilities: (1) public person/public matter, (2) private person/public matter, (3) public person/private matter, and (4) private person/private matter." *Id.*, 431. Although the defendant would characterize this matter as one involving a "private person/private matter," the court concludes otherwise, that the declarations involve a private person's statements concerning a public matter.

The Supreme Court's analysis in *Gleason,* regarding "the proper legal standard with respect to the proof of defamation claims brought by private figures relating to matters of public concern," *id.*, 443, is instructive in the present matter and informed by the decision of the United States Court of Appeals for the Second Circuit in *Flamm v. American Assn. of University Women,* 201 F.3d 144 (2d Cir. 2000). "In *Flamm,* the Second Circuit extended the rule of *Philadelphia Newspapers, Inc. v. Hepps,* 475 U.S. 767, 106 S.Ct. 1558, 89 L.Ed.2d 783 (1986), to [a] nonmedia defendant and held that, when an allegedly defamatory statement is made about a plaintiff who is a private figure, but relates to a matter of public concern, those defamatory statements must be provably false, and the plaintiff must bear the burden of proving falsity, at least in cases where the statements were directed towards a public audience with an interest in that concern." *Gleason v. Smolinski, supra*, 319 Conn. 443-44.

***5** In the present matter, the plaintiff has offered evidence of checks from the defendant, deposited into the Rockoff Realty escrow account. Although there is no showing by the plaintiff of how and to whom the escrowed funds were released, the defendant has offered no evidence to support the truth of her statement that the funds were released illegally, prior to the closing on her home. The defendant also suggests in her brief that the plaintiff has offered no proof of malice; however, this is not an element of the analysis applicable to statements made regarding a private person on a matter of public concern.

As our Supreme Court has previously noted, "under *New York Times Co. v. Sullivan ... if the plaintiff is a public, figure ...* the plaintiff also must prove that the defamatory statement was made with actual malice, such that the statement, when made, [was] made with actual knowledge that it was false or with reckless disregard of whether it was false ... Additionally, to recover punitive damages, a plaintiff must prove actual malice, regardless of whether the plaintiff is a public figure ... To sustain an

award of punitive damages, the plaintiff must prove actual malice by clear and convincing evidence, which denotes a degree of belief that lies between the belief that is required to find the truth or existence of the issuable fact in an ordinary civil action and the belief that is required to find guilt in a criminal prosecution." (Emphasis added; citations omitted; internal quotation marks omitted.) *Gleason v. Smolinski, supra*, 319 Conn. 431-32. Malice is also an element in defamation cases involving a qualified privilege, which "may be defeated if it can be established that the holder of the privilege acted with malice in publishing the defamatory material." *Gambardella v. Apple Health Care, Inc.,* 291 Conn. 620, 630, 969 A.2d 736 (2009).

In the present case, the plaintiff has not alleged that the plaintiff is a public figure and, similarly, there is no qualified privilege alleged in the record of the case. As such, no showing of malice is required to be produced by the plaintiff, as asserted by the defendant. Malice is, however, necessary for an award of punitive damages and attorneys fees under the common law. The plaintiff seeks attorneys fees in this matter pursuant to General Statutes § 52-196a(f)(2), asserting that the motion to dismiss *"is frivolous and solely intended to cause unnecessary delay."*[2] The court will deny this request, without prejudice, absent a further hearing and argument on the question of whether the state, statutory standard of frivolousness and intentional delay is superseded by the element of malice, required for attorneys fees in defamation cases as a matter of constitutional law.

III

CONCLUSION

The court finds for the plaintiff by the applicable standard of probable cause and, therefore, the defendant's special motion to dismiss is denied.

All Citations

Not Reported in Atl. Rptr., 2020 WL 4333864, 70 Conn. L. Rptr. 39

Footnotes

1 Element 4 of the common-law test, requiring that the plaintiff's reputation suffered injury as a result of the statement, is met in this case because statements involving criminal behavior are "defamatory per se because they charge crimes punishable by imprisonment ..." *Gleason v. Smolinski, supra*, 319 Conn. 435.

2 General Statutes § 52-196a(f) provides: (1) If the court grants a special motion to dismiss under this section, the court shall award the moving party costs and reasonable attorneys fees, including such costs and fees incurred in connection with the filing of the special motion to dismiss. (2) *If the court denies a special motion to dismiss under this section and finds that such special motion to dismiss is frivolous and solely intended to cause unnecessary delay, the court shall award costs and reasonable attorneys fees to the party opposing such special motion to dismiss.* (Emphasis added.)

2023 WL 370988
Only the Westlaw citation is currently available.

Superior Court of Connecticut,
JUDICIAL DISTRICT OF NEW HAVEN AT NEW HAVEN.

Robert J. SICIGNANO, Jr., CPA, Esq.
v.
Barbara PEARCE, et al.

DOCKET NO. NNH CV-22-6126506-S
|
JANUARY 19, 2023

MEMORANDUM OF DECISION ON DEFENDANTS' SPECIAL MOTIONS TO DISMISS Nos. 102.00 and 106.00

Elizabeth J. Stewart

***1** Defendants Barbara Pearce and Connecticut Hospice, Inc. move to dismiss Plaintiff Robert Sicignano's complaint, claiming that this lawsuit is a strategic lawsuit against public participation ("SLAPP"). They argue that all of the statements and conduct attributed to the defendants in the complaint were exercises of the defendants' rights to petition the government and rights of free speech. They further argue that the plaintiff has not adequately plead his claims and cannot establish probable cause that he will prevail on the merits. Therefore, they ask this court to dismiss that complaint pursuant to Connecticut's Anti-SLAPP statute, General Statutes § 52-196a. The plaintiff opposes the motions.

This court "shall grant" these special motions to dismiss:

> "if the moving party makes an initial showing, by a preponderance of the evidence, that the opposing party's complaint ... is based on the moving party's exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, unless the party that brought the complaint ... sets forth with particularity the circumstances giving rise to the complaint ... and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint ...."

General Statutes § 52-196a (e) (3).

FACTS

Section 52-196a (e) (2) provides that the court shall consider the allegations of the complaint as well as supporting and opposing affidavits. Accordingly, this court has considered the complaint, including the exhibits to that complaint that were filed at docket entry no. 116.00, the plaintiff's affidavit no. 114.00 and accompanying exhibits, and Connecticut Hospice's affidavits nos. 104.00 and 105.00. Based on these filings, the court considers the following facts:

The plaintiff, who is both a Connecticut attorney and a licensed certified public accountant, was counsel to the executrix in the matter of *In re Estate of Spirito* while it was pending in the Wallingford Probate Court. The executrix, a grandniece of the

decedent, was one of four specific beneficiaries of the will. Connecticut Hospice, a charitable corporation, was the sole residuary beneficiary of the will. At all times relevant for this complaint, Pearce, a Connecticut licensed attorney, was the chief executive officer of Connecticut Hospice. During the pendency of the probate proceedings, Connecticut Hospice was represented by Attorney Andrew Knott and Attorney Gregory Pepe.

The original will provided that each of the four beneficiaries would receive $50,000, and that Connecticut Hospice would receive the residue of the estate. While the matter was pending before the probate court, the executrix found an unsigned codicil that the decedent mailed to his previous counsel. That unsigned codicil increased the bequests to each of the beneficiaries from $50,000 to $100,000, thereby decreasing the share of the estate that would go to Connecticut Hospice. After much back and forth in 2018 and 2019, the individual beneficiaries moved to compel a settlement they claimed they had reached regarding the codicil. This resulted in a hearing in the probate court pursuant to *Audubon Parking Associates Ltd. Partnership v. Barclay & Stubbs, Inc.*, 225 Conn. 804, 626 A.2d 729 (1993). At that hearing, Defendant Pearce stated that she wanted to "extract a pound of flesh."

***2** After that hearing, the parties executed a document entitled Settlement Agreement, Mutual Distribution Agreement and Release. The probate court approved that agreement on October 31, 2019. The agreement provided for distributions of an additional $23,000 to each of the individual beneficiaries and an interim distribution of $800,000 to Connecticut Hospice. It also included a non-disparagement clause that prevented the "parties" to the agreement from making "disparaging oral or written statements about the other parties to this Settlement Agreement." The parties to the agreement were Connecticut Hospice and the individual beneficiaries. Pearce signed the agreement, but only in her capacity as chief executive officer of Connecticut Hospice. The plaintiff did not sign the agreement.

Connecticut Hospice's counsel Attorney Pepe executed and filed a waiver of notice and hearing for final distribution in January 2020. The next month, Connecticut Hospice's other counsel, Attorney Knott, filed a petition to remove the fiduciary. That petition was denied by the probate court at a hearing on March 3, 2020.

"At subsequent hearings," Connecticut Hospice's counsel "began knowingly and/or recklessly making false claims before the Probate Court concerning allegations of 'irregularities,' 'missing funds,' falsely and maliciously accusing the Plaintiff of 'borrowing from the funds' of the estate without any evidence whatsoever." On or about April 9, 2020, Pearce sent an email to the individual beneficiaries' counsel that stated in part: "I guess that means that the rumor I heard that [the Plaintiff] was 'borrowing' from the funds isn't true."

In November 2020, after a hearing about the plaintiff's attorneys' fees, the plaintiff, counsel for the individual beneficiaries, and Attorney Pepe held a settlement conference. Attorney Pepe demanded an additional distribution of $80,000 to Connecticut Hospice prior to the approval of the financial report. The plaintiff alleges that this payment would have been precluded by language in the agreement that any subsequent distribution after the interim distribution of $800,000 would be made after the conclusion of the final accounting and approval by the probate court. Attorney Pepe then threatened to grieve the plaintiff if he did not make the $80,000 disbursement. On November 30, 2020, the plaintiff e-filed a letter with the probate court, requesting sanctions against Attorney Pepe for his threat to grieve the plaintiff and against Pearce for her threat to "extract a pound of flesh."

On December 18, 2020, Pearce, in her capacity as chief executive officer of Connecticut Hospice, filed a grievance against the plaintiff. [1] In that grievance, Pearce complained about the fees charged by the plaintiff, the delays in filing accountings with the probate court, and the failure to pay Connecticut Hospice at least $100,000 of the additional $200,000 it expected to receive after the interim payment of $800,000.

In a separate grievance brought by the plaintiff against Pearce, the panel found probable cause that Pearce had engaged in misconduct when she sent the email referring to the rumors about "borrowing from the Estate funds" and when she filed the grievance against the plaintiff.

In December 2020, the defendants contacted the Office of Attorney General, which filed another appearance in the probate court.

***3** After the plaintiff and the executrix consulted with Attorney Paul Knierim in January 2021, Attorney Knierim called the executrix and then held a conference call with both the executrix and the plaintiff to tell them that Attorney Knott was alleging that funds were missing from the Estate. Any statements made by Attorney Knott to Attorney Knierim were in connection with this probate matter. Later that same month, Attorney Knott stated in a letter to the probate court that Connecticut Hospice had no other objections to the final account other than the plaintiff's attorney's fees.

In addition to the grievance he filed against Pearce, the plaintiff also filed a grievance against Attorney Knott. The panel found probable cause that Attorney Knott engaged in misconduct, including allegations that the plaintiff may have been involved in forging a signature and "inaction" in connection with his client's "comments/innuendos" as to the plaintiff borrowing estate funds. The litigation at issue in the grievance was the *In re Spirito Estate* probate court matter.

On May 14, 2021, Attorney Pepe sent an ex parte communication to the Probate Court that ultimately caused the presiding probate judge to recuse himself.

LEGAL ANALYSIS

I. THE COMPLAINT IS WITHIN THE SCOPE OF THE STATUTE.

Connecticut's Anti-SLAPP statute, Section 52-196a, provides for a special motion to dismiss. In that motion, the defendants must make an initial showing, by a preponderance of the evidence, that the complaint is based on their exercise of their rights of free speech or their rights to petition the government in connection with a matter of public concern. General Statutes § 52-196a (e) (3). These terms are defined by the statute as follows:

> "(1) A 'matter of public concern' means an issue related to (A) health or safety, (B) environmental, economic or community well-being, (C) the government, zoning and other regulatory matters, (D) a public official or public figure, or (E) an audiovisual work;
>
> "(2) 'Right of free speech' means communicating, or conduct furthering communication, in a public forum on a matter of public concern;
>
> "(3) 'Right to petition the government,' means (A) communication in connection with an issue under consideration or review by a legislative, executive, administrative, judicial or other governmental body, (B) communication that is reasonably likely to encourage consideration or review of a matter of public concern by a legislative, executive, administrative, judicial or other governmental body, or (C) communication that is reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative, executive, administrative, judicial or other governmental body."

General Statutes § 52-196a (a) (1)-(3).

The communications or conduct furthering communications that the plaintiff alleges in his complaint by Pearce on her own behalf or on behalf of Connecticut Hospice were:

- Pearce's statement at the *Audubon* hearing that she wanted to "extract a pound of flesh;"
- Pearce's April 9, 2020 email to the individual beneficiaries' counsel that stated in part: "I guess that means that the rumor I heard that [the Plaintiff] was 'borrowing' from the funds isn't true;" and

• Pearce's filing of a grievance against the plaintiff.

The communications or conduct furthering communications that the plaintiff alleges in his complaint by counsel on behalf of Connecticut Hospice were:

• Attorney Knott's filing of a petition to remove the fiduciary;

• Counsel's making false claims of irregularities and missing funds and accusing the plaintiff of borrowing from the funds of the estate "at subsequent hearings" before the probate court;

***4** • Attorney Pepe's demand for $80,000 to be paid to Connecticut Hospice before the approval of the final accounting and his threat to grieve the plaintiff if the $80,000 was not paid;

• Counsel's contact with the Office of the Attorney General that caused it to file another appearance with the probate court;

• Attorney Knott's statement to Attorney Knierim that funds were missing from the estate;

• Attorney Knott's allegation that the plaintiff may have been involved in forging a signature and Attorney Knott's inaction in response to his client's comments or innuendos about the plaintiff borrowing estate funds; and

• Attorney Pepe's sending an ex parte letter to the probate court.

A. The Communications Were in Connection with a Matter of Public Concern.

The defendants argue that the communications and conduct furthering communications above were in connection with a matter of public concern because (1) Connecticut Hospice's status as a charitable 501 (c) (3) corporation that was the residual beneficiary makes the estate funds a matter of public concern, (2) Connecticut Hospice's mission to provide hospice care makes the issues a matter of economic and community well-being, and (3) the conduct of an attorney is a matter of public concern. The plaintiff does not challenge any of these assertions. Indeed, the plaintiff makes no argument that the communications at issue were not about matters of public concern.

The court concludes that the communications here all were in connection with a matter of public concern. All of the communications related to a charitable organization that was named as the sole residual beneficiary receiving its share of an estate and the possible actions of the plaintiff and his client that might have interfered with that organization's rights under the will. As the defendants point out, Section 3-125 of the General Statutes requires that the Attorney General "represent the public interest in the protection of any gifts, legacies or devises intended for public or charitable purposes." Moreover, Rule 30.6 (4) of the Probate Rules of Procedure requires notice to the Attorney General of petitions to admit a will to probate when any "beneficiary under [the] will ... is a charity or charitable interest." In this probate matter, the Attorney General appeared because Connecticut Hospice was the sole residual beneficiary.

In addition, the statements that the plaintiff was borrowing estate funds or was responsible for irregularities or missing funds in the estate raised matters of public concern. "Public allegations that someone is involved in crime generally are speech on a matter of public concern." (Citation omitted.) *Gleason v. Smolinski,* 319 Conn. 394, 415, 125 A.3d 920 (2015). At least one Superior Court has held that a negative Yelp review of a realtor that accused him of illegally mishandling funds that had been deposited with him to be held in escrow was speech involving a matter of public concern. *Rockoff v. Annulli,* Superior Court, judicial district of Hartford, Docket No. CV-20-6122116-S (July 2, 2020, *Taylor, J.*). After noting that the definition of "matter of public concern" includes issues of "economic or community wellbeing ... and other regulatory matters," that court held that that definition would "include unethical behavior alleged against a regulated professional." Finally, "the public has an interest in being informed of the outcome of disciplinary proceedings involving attorneys licensed to practice law in this state." *Elder v. Kauffman,* 204 Conn. App. 818, 830 n. 3, 254 A.3d 1001 (2021).

B. All of the Communications Were Exercises of the Right to Petition the Government.

***5** The defendants argue that all of the communications listed above were exercises of their rights of free speech and rights to petition the government as those terms are defined in the statute. They argue that the statements were free speech because they were made in a public forum – the probate court. They argue that the communications were part of their rights to petition the government because they were made in connection with an issue under consideration or review by the probate court in the *In re Spirito Estate* matter. They do not argue that either the second or third prongs of the right to petition the government definition applies here.

The plaintiff does not respond to the free speech argument. The plaintiff does, however, oppose the right to petition the government argument. He claims that the communications were not made "in connection with an issue under consideration or review" by the probate court. First, he argues that the statements were not made before the probate court while it was in session. Second, he argues that the issue of whether he was "borrowing the funds" was not the "issue under consideration or review" by the probate court or any other judicial body. The court concludes that the plaintiff's interpretation of the statute's definition of the right to petition the government is too narrow. [2]

1. Some Communications Were Not Speech in a Public Forum.

The statute defines "right of free speech" as "communicating, or conduct furthering communication, in a public forum on a matter of public concern." All of the allegations concern communications or conduct furthering communications. The issue is whether they were made in a public forum. The statements made during a probate court proceeding or in a probate court filing were made in a public forum. See *Connecticut Probate Rule of Procedure 16.1 (a)* ("Except as otherwise provided by law or directed by the court in accordance with this rule, members of the public may observe hearings, status conferences and hearing management conferences and may view and obtain copies from court records"). Furthermore, the grievance filed by Pearce against the plaintiff was made in a public forum. See *Statewide Grievance Committee v. Presnick,* 215 Conn. 162, 171, 575 A.2d 210 (1990) (holding that public hearings following a finding of probable cause on a grievance or presentment proceedings provide "a constitutionally adequate public forum"). The remaining issue is whether statements made out of court in emails, conversations and telephone calls were made in a public forum.

***6** Although Section 52-196a does not define "public forum," Superior Courts have addressed what is considered a public forum for anti-SLAPP purposes. See, e.g., *Cevetillo v. Lang*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-19-6031687-S (December 13, 2019, *Tyma, J.*) (social media posts were made in a public forum); *Gifford v. Taunton Press, Inc.*, Superior Court, judicial district of Danbury, Docket No. CV-18-6028897-S (July 11, 2019, *D'Andrea, J.T.R.*) (online book review posted on website was in a public forum); *Graves v. Chronicle Printing Co.*, Superior Court, judicial district of Tolland, Docket No. CV-18-5010056-S (November 7, 2018, *Farley, J.*) (67 Conn. L. Rptr. 442) (articles published in a newspaper were in a public forum). None of these decisions are on point for this case.

In the absence of Connecticut authority directly related to whether private emails, conversations and telephone calls were made in a public forum for anti-SLAPP purposes, this court will consult authority from other states. Connecticut courts have looked to other state's interpretation of their anti-SLAPP statutes for guidance. See, e.g., *Noble v. Hennessey*, Superior Court, judicial district of New London, Docket No. CV-20-6045166-S (January 12, 2021, *Calmar, J.*).

California anti-SLAPP cases hold that public access, not the right to public comment, is the hallmark of a public forum. "Cases construing the term 'public forum' as used in [the California anti-SLAPP statute] have noted that the term is traditionally defined as a place that is open to the public where information is freely exchanged.... This encompasses websites and online message boards and forums that are accessible free of charge to any member of the public where members of the public may read the views and information posted, and post their own opinions.... However, means of communication where access is selective ...

are not public forums." (Internal quotations omitted; internal citations omitted.) *Nygard, Inc. v. Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1037–38, 72 Cal. Rptr. 3d 210 (2008).

In *Abrams v. Sanson*, 136 Nev. 83, 458 P.3d 1062 (2020), the Supreme Court of Nevada had occasion to distinguish, for public forum purposes related to an anti-SLAPP suit, a single email exchange between two private parties or a communication sent to a small number of people in a private email chain, with communications made to members of a listserv broadcast to thousands of people. While the *Abrams* court held that an email reaching a person's private inbox "does not take the communication out of the ambit of a public forum," the number of people receiving the communication was dispositive of whether such e-mails were made in a public forum. The Supreme Court of Nevada also has held that a private phone conversation does not constitute a public forum. "Statements made in a private telephone conversation between two people are not statements made 'in a place open to the public or in a public forum.' " Id., 89 (citing *Lane v. Allstate Ins. Co.*, 114 Nev. 1176, 1179, 969 P.2d 938 (1998) (recognizing the private nature of telephone conversations)).

This court finds that the email sent by Pearce to the individual beneficiaries' counsel, as well as the in-person conversations and telephone calls among lawyers during the probate litigation were not made in a public forum. These communications were private communications sent from one individual to another. They were not freely transmitted to a large number of people and were not accessible to the public. Therefore, the court concludes that these private communications were not exercises of the defendants' right of free speech for purposes of the anti-SLAPP statute. Such a conclusion, however, does not foreclose the possibility that these communications were exercises of the defendants' rights to petition the government.

2. All Communications Were In Connection With An Issue Under Consideration By A Judicial Body.

***7** The questions raised by the parties' dispute over the right to petition the government definition are (1) whether "in connection with" requires that the communications actually occur during a probate court hearing, and (2) whether that same language requires that the communications must be explicitly about the "issue under consideration or review."

The court first will consider whether the requirement that the communication must be made "in connection with" an issue under consideration or review by a judicial body means that the communication must be made during a probate court hearing. Preliminarily, several of the communications that were alleged by the plaintiff appear to satisfy even this strict standard because they occurred during a probate court hearing or they brought about a hearing: Pearce's statement that she wanted to "extract a pound of flesh," Attorney Knott's filing of a petition to remove a fiduciary, the false claims made by Connecticut Hospice's counsel "at subsequent hearings," and Attorney Pepe's sending of an ex parte communication to the probate court.

As to the remaining communications, this court's own basic reading of the language "communication in connection with an issue under consideration or review by a ... judicial ... body" is that it does not require that the communication happen during a hearing. This is consistent with Connecticut caselaw on the litigation privilege, which construes "judicial proceeding" "liberally to encompass much more than civil litigation and criminal trials." *Hopkins v.* O'Connor, 282 Conn. 821, 839, 925 A.2d 1030 (2007). See discussion infra at 23-25.

Connecticut Superior Court cases support this court's conclusion that "in connection with" includes communications outside of the courtroom. At least one Superior. Court decision considered whether communications were made "in connection with" an issue under consideration or review for purposes of the right to petition in Section 52-196a(a)(3)(A). *Baity v. Mickley-Gomez*, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. CV-19-6092718-S (December 14, 2020, *Stevens, J.*). That court held that statements made to the plaintiff's ex-husband and neighbor regarding the truthfulness of the plaintiff were "in connection with" a police department's investigation, and sufficient to satisfy the statutory definition of right to petition the government.

Other Superior Courts have held that reporting alleged criminal activity to the police, as well as such preliminary steps as engaging in surveillance and taking photographs for a zoning matter or writing letters to a newspaper editor constitute petitioning the government for purposes of the anti-SLAPP statute. See, e.g., *Primrose Cos. v. McGee,* Superior Court, judicial district of Waterbury, Docket No. CV-21-6062747-S (August 26, 2022, *Pierson, J.*) (writing letters to the editor); *Lawrence v. Chambers,* Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. CV-20-5022942-S (September 21, 2020, *Krumeich, J.T.R.*) (making complaint to police); *Reid v. Harriman,* Superior Court, judicial district of Fairfield, Docket No. CV-19-6083510-S (October 28, 2019, *Welch, J.*) (reporting criminal activity to police); *Day v. Dodge,* Superior Court, judicial district of New London, Docket No. CV-18-6034362-S (January 24, 2019, *Knox, J.*) (67 Conn. L. Rptr. 750) (making complaint to police); *Cicerone v. Lynch,* Superior Court, judicial district of Danbury, Docket No. CV-18-6026091-S (July 25, 2018, *Krumeich, J.*) (68 Conn. L. Rptr. 69) (engaging in surveillance and taking photographs).

***8** The California Court of Appeals has held that an attorney sending two private letters to another attorney was "conduct in furtherance of the exercise" of the right to petition the government, even though the letters excoriated the opposing counsel, because they were written in the context of the disputes between the parties, were part of the ongoing discussion over those disputes, and "contributed to the public debate" on the issues presented by those disputes. *Ruiz v. Harbor View Community Association*, 134 Cal. App. 4th 1456, 1467, 37 Cal. Rptr. 3d 133 (2005).

In addition, even if Pearce's statements in the grievance that she filed against the plaintiff were not "in connection with" the probate court proceeding, they were "in connection with" an issue under consideration by another judicial body – the grievance panel. Our Appellate Court has held that a grievance proceeding is quasi-judicial in nature. *Cohen v. King,* 189 Conn. App. 85, 90, 206 A.3d 188 (2019), cert. denied, 336 Conn. 925, 246 A.3d 986 (2021). See also *Carter v. Bowler,* 211 Conn. App. 119, 125, 271 A.3d 1080 (2022). Filing a grievance complaint has been held to be petitioning the government. *Noble v. Hennessey,* supra, Superior Court, Docket No. CV-20-6045166-S.

The court will next consider whether the "in connection with" language requires that the topic of the communications be the same as the "issue under consideration or review." Research has not revealed any Connecticut caselaw on this issue. There is, however, a significant body of law in California. The California statute uses the language "in connection with" repeatedly in its definition of "an act in furtherance of the defendant's right of petition the government or free speech in connection with a public issue."[3] Although that overall statute is broader and more detailed than Connecticut's definition of the right to petition, subsection (e)(2) of the California statute is almost identical to Section 52-196a(a)(3)(A).

Subsection (e)(2) of the California statute was held to cover a letter that accused the plaintiff fired employee of breach of contract and theft of trade secrets. *Neville v. Chudacoff,* 160 Cal. App. 4th 1255, 1259, 73 Cal. Rptr. 3d 383 (2008). That letter was sent by the defendant's lawyer to the defendant's customers prior to the litigation. Id. Specifically, the court held that the lawyer's letter was "made in connection with an issue under consideration or review by a ... judicial body." Id. In the course of reaching that holding, the court reviewed a number of other California cases and concluded that they stood for "the proposition that a statement is 'in connection with' litigation under [subsection (e)(2) of the California anti-SLAPP statute] if it relates to the substantive issues in the litigation and is directed to persons having some interest in the litigation." Id. at 1266. This court concludes that the test is consistent with Connecticut caselaw and adopts that test here.

***9** Before applying the *Neville v. Chudacoff* test to this case, this court will provide further examples discussed in *Neville v. Chudacoff* from California cases to illustrate when the subject matter of the communication is or is not "in connection with" the substantive issues being considered by a judicial body. The court first discussed *Paul v. Friedman*, 95 Cal. App. 4th 853, 117 Cal. Rptr. 2d 82 (2002). In that case, the Court of Appeals held that the communication was not "in connection with" the underlying securities arbitration. The communication was a disclosure by the opposing attorney about the broker's personal life to the broker's clients. That court noted that "[t]he statute does not accord anti-SLAPP protection to suits arising from any act having any connection, however remote, with an official proceeding. The statements or writings in question must occur in connection with 'an issue under consideration or review' in the proceeding." Id. at 866.

The next case discussed found that the communication was "in connection with" the underlying declaratory relief action filed by a homeowners association against a resident. *Healy v. Tuscany Hills Landscape & Recreation Corp.*, 137 Cal. App. 4th 1, 39 Cal. Rptr. 3d 547 (2006). The communication was a letter sent by the homeowners association to the other residents, informing them of the litigation and stating that the resident who was being sued was increasing their costs.

The *Neville v. Chudacoff* court also analyzed *Contemporary Services Corp. v. Staff Pro Inc.*, 152 Cal. App. 4th 1043, 61 Cal. Rptr. 3d 434 (2007). In that case, two competing companies were in litigation against each other when the president of one of the companies sent an email to its customers stating that the opposing party had paid his company's ex-employees to make false statements. The court held that this email was "in connection with" that litigation.

This court concludes that under the test used by California courts, the communications at issue here were made "in connection with an issue under consideration or review by a ... judicial or other governmental body." All of the communications, including those that alleged that the plaintiff was borrowing funds or that funds were missing from the estate, relate to the substantive issues in *In re Espirito Estate* and were directed to persons having some interest in those probate proceedings. As discussed below, this is also consistent with Connecticut caselaw that holds that the litigation privilege applies if the statement "has some reference to the subject matter of the proposed or pending litigation, although it need not be strictly relevant to any issue involved in it ...." *Hopkins v. O'Connor,* supra, 282 Conn. at 833.[4] The plaintiff offers no authority for its narrower definition of "in connection with," and research has not revealed any such authority. Therefore, the. court holds that the defendants have met their burden of demonstrating that the complaint is based on their exercise of their rights to petition the government.

II. THE PLAINTIFF HAS NOT ESTABLISHED PROBABLE CAUSE THAT HE WILL PREVAIL.

The Anti-SLAPP statute analysis now shifts the burden to the plaintiff to "[set] forth with particularity the circumstances giving rise to the complaint ... and [demonstrate] to the court that there is probable cause, considering all valid defenses, that [he] will prevail on the merits of the complaint." General Statutes § 52-196a (e) (3). "This statutory burden has two components: [the] '[plaintiff] must demonstrate *both* that [his] pleadings are adequate *and* the existence of probable cause that [he] will prevail.' " (Emphasis in original; citation omitted.) *Pacheco Quevedo v. Hearst Corp.,* Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. CV-19-5021689-S (December 19, 2019, *Sommer, J.*).

A. Three Counts of the Complaint Are Not Adequate.

***10** The plaintiff's complaint consists of five counts: count one: breach of contract, count two: defamation, count three: defamation per se, count four: fraud, and count five: Connecticut Unfair Trade Practices Act ("CUTPA"). The plaintiff fails to allege the basic elements of three of these claims.

In the breach of contract count, the plaintiff alleges that the defendants breached the Settlement Agreement, Mutual Distribution Agreement and Release that the individual beneficiaries and Connecticut Hospice entered into and that the probate court approved. Specifically, he alleges that the defendants' communications violated the non-disparagement clause of that agreement. The fatal flaw in that count is that the plaintiff has not alleged, and cannot allege, that he is a party to that agreement. Indeed, the plaintiff has attached the agreement as Exhibit A to his complaint. No. 116.00. That agreement's non-disparagement clause, by its clear terms, only protects the parties to the agreement. Therefore, the plaintiff, who is neither a party nor an intended third-party beneficiary of the agreement, lacks standing to sue on the agreement. *Wells Fargo Bank, N.A. v. Strong,* 149 Conn. App. 384, 402, 89 A.3d 384, cert. denied, 312 Conn. 923, 94A.3d 1202 (2014).

The plaintiff fails to allege all of the elements of fraud in his fraud count. The "essential elements" of a cause of action for common law fraud are:

> "(1) a false representation was made as a statement of fact; (2) it was untrue and known to be untrue by the party making it; (3) it was made to induce the other party to act upon it; and (4) the other party did so act upon that false representation to

his injury.... [T]he party to whom the false representation was made [must claim] to have relied on that representation and to have suffered harm as a result of the reliance."

Simms v. Seaman, 308 Conn. 523, 548, 69 A.3d 880 (2013) (quoting *Sturm v. Harb Development, LLC,* 298 Conn. 124, 142, 2 A.3d 859 (2010)).

The plaintiff fails to allege that any of these communications that he claims were false were made to him, that he relied on any of those communications, or that he suffered harm as a result of that reliance. Therefore, his fraud count is inadequate. See *Suffield Development Associates Ltd. Partnership v. National Loan Investors, L.P.,* 260 Conn. 766, 778-79, 802 A.2d 44 (2002) (affirming decision striking a fraud count that failed to allege that the representation was made to the plaintiff or that the plaintiff relied upon it).

Finally, count five does not adequately state a CUTPA claim. The required elements of a CUTPA private cause of action are: that there has been (1) an unfair method of competition or unfair or deceptive act or practice, (2) committed by the defendant in the conduct of trade or commerce, that causes the plaintiff to sustain (3) an ascertainable loss. General Statutes §§ 42-110b (a); 42-110g (a). The plaintiff has not alleged any of these elements in his CUTPA claim. Even if he could replead to allege an unfair or deceptive act or practice that caused him an ascertainable loss, he could not allege the trade or commerce element. The statute defines "trade" and "commerce" as "the advertising, the sale or rent or lease, the offering for sale or rent or lease, or the distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value in this state." General Statutes § 42-110a (4). Furthermore, the activities must be in a defendant's primary trade or commerce, not merely incidental to that primary trade or commerce. *NRT New England, LLC v. Longo,* 207 Conn. App. 588, 611, 263 A.3d 870, cert. denied, 340 Conn. 906, 263 A.3d 821 (2021). Here, Connecticut Hospice's primary trade or commerce is the provision of inpatient and home hospice care and palliative care to patients suffering from irreversible illness. Pearce's primary trade or commerce was as its chief executive officer. Finally, even though many of the activities here are alleged to have been conducted by lawyers, including Pearce, the practice of law is not considered to be trade or commerce, and attorneys may only be held liable under CUTPA for the "entrepreneurial" aspects of their practice. *Kosiorek v. Smigelski,* 138 Conn. App. 695, 711-12, 54 A.3d 564 (2012), cert. denied, 308 Conn. 901, 60 A.3d 287 (2013).

***11** The plaintiff has not adequately pleaded three of the five counts of his complaint.

B. The Plaintiff Has Not Established Probable Cause That He Will Prevail.

Even if the plaintiff's defamation and defamation per se claims are adequately pleaded, he is unlikely to prevail on any of the counts of his complaint. The Anti-SLAPP statute requires that he demonstrate that there is "probable cause, considering all valid defenses, that [he] will prevail on the merits of the complaint." General Statutes § 52-196a (e) (3). "The legal idea of probable cause is a bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a man of ordinary caution, prudence and judgment, under the circumstances, in entertaining it.... Proof of probable cause is not as demanding as proof by preponderance of the evidence." (Citations omitted.) *Elder v. Kauffman*, supra, 204 Conn. 825. The plaintiff here cannot demonstrate probable cause because all five of the counts of the complaint are barred by the defense of absolute immunity based on the litigation privilege.

The statute explicitly requires the court to consider "all valid defenses." General Statutes § 52-196a (e) (3). In *Elder v. Kauffman,* supra, 204 Conn. 818, our Appellate Court affirmed a trial court's finding of no probable cause when granting a special motion to dismiss. The court specifically rejected the plaintiff's argument that res judicata and collateral estoppel were not applicable to a special motion to dismiss and could only be asserted later as special defenses. After acknowledging that res judicata is a special defense that generally is not raised in a motion to dismiss, it pointed out that a special motion to dismiss under the anti-SLAPP statute is not a traditional motion to dismiss. Id. 824. Instead, a special motion to dismiss is "a truncated evidentiary procedure enacted by our legislature in order to achieve a legitimate policy objective, namely, to provide for a prompt remedy." Id. The court went on to equate a special motion to dismiss to a motion for summary judgment. Id.

California courts have considered the litigation privilege in the second step of the anti-SLAPP analysis because it is a defense that a plaintiff must overcome to demonstrate a probability of prevailing. See, e.g., *Kashian v. Harriman*, 98 Cal. App. 4th 892, 926–927, 120 Cal. Rptr. 2d 576 (2002) (holding that where the plaintiff's defamation action was barred by the litigation privilege, the plaintiff could not demonstrate a probability of prevailing under the anti-SLAPP statute); *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman*, 47 Cal. App. 4th 777, 783–785, 54 Cal. Rptr. 2d 830 (1996) (holding that the defendant's prelitigation communication was privileged and that the trial court properly granted motion to strike under the anti-SLAPP statute).

The litigation privilege provides that "[a]n attorney at law is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of, or during the course and as part of, a judicial proceeding in which he participates as counsel, if it has some relation to the proceeding." *Simms v. Seaman,* supra, 308 Conn. 535 (quoting 3 Restatement (Second) of Torts § 586). The privilege applies to parties as well as attorneys. *Hopkins v. O'Connor,* supra, 282 Conn. at 833 (quoting 3 Restatement (Second) of Torts § 587). It provides absolute immunity (protection against suit as well as liability) and thus deprives the court of subject matter jurisdiction. *Dorfman v. Smith,* 342 Conn. 582, 594, 271 A.3d 53 (2022); *Carter v. Bowler,* 211 Conn. App. 119, 121-22, 271 A.3d 1080 (2022); *Tyler v. Tatoian,* 164 Conn. App. 82, 83, 87, 137 A.3d 801, cert. denied, 321 Conn. 908, 135 A.3d 710 (2016). When the litigation privilege is raised, it has the effect of shifting the burden of proof. "The plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised." *Fink v. Golenblock,* 238 Conn. 183, 199 n. 13, 680 A.2d 1243 (1996).

***12** Our Supreme Court repeatedly has recognized that conferring absolute immunity for the litigation privilege is necessary to serve the "public interest in having people speak freely":

> "[T]he purpose of affording absolute immunity to those who provide information in connection with judicial and quasi-judicial proceedings is that in certain situations the public interest in having people speak freely outweighs the risk that individuals will occasionally abuse the privilege by making false and malicious statements.... [T]he possibility of incurring the costs and inconvenience associated with defending a [retaliatory] suit might well deter a citizen with a legitimate grievance from filing a complaint.... Put simply, absolute immunity furthers the public policy of encouraging participation and candor in judicial and quasi-judicial proceedings. This objective would be thwarted if those persons whom the common-law doctrine [of absolute immunity] was intended to protect nevertheless faced the threat of suit. In this regard, the purpose of the absolute immunity afforded participants in judicial and quasi-judicial proceedings is the same as the purpose of the sovereign immunity enjoyed by the state.... As a result, courts have recognized absolute immunity as a defense in certain retaliatory civil actions in order to remove this disincentive and thus encourage citizens to come forward with complaints or to testify."

Dorfman v. Smith, supra, 342 Conn. 591 (quoting *MacDermid, Inc. v. Leonetti,* 310 Conn. 616, 627-28, 79 A.3d 60 (2013)).

If applicable to these communications, the litigation privilege bars each of the plaintiff's causes of action:

- Count one: breach of contract (*Sobran v. Kohl,* Superior Court, judicial district of New Haven, Docket No. CV14-5034948-S (September 1, 2016, *Wilson, J.*); see also *Dorfman v. Smith,* supra, 342 Conn. 612 (litigation privilege bars breach of covenant of good faith and fair dealing claim); *Rioux v. Barry,* 283 Conn. 338, 350-52, 927 A.2d 304 (2007) (litigation privilege bars tortious interference with contractual relations claim));
- Counts two and three: defamation and defamation per se (*Priore v. Haig,* 344 Conn. 636, 645-46, 280 A.3d 402 (2022));
- Count four: fraud (*Simms v. Seaman,* supra, 308 Conn. 568-69; *Tyler v. Tatoian,* supra, 164 Conn. App. 91-92); and
- Count five: CUTPA (*Simms v. Seaman,* supra, 308 Conn. 561-62).

The plaintiff argues that the communications alleged in his complaint were not "uttered or published in the course of judicial proceedings" or "in some way pertinent to the subject of the controversy." Opposition memorandum no. 114.00 at 12 (quoting from *Priore v. Haig,* supra, 344 Conn. 645).

The question of whether absolute immunity protects communications and conduct during judicial or quasi-judicial proceedings is a question of law. *Simms v. Seaman,* supra, 308 Conn. 530. Our Supreme Court has elaborated on how this court should answer that question:

> "[I]n determining whether a statement is made in the course of a judicial proceeding, it is important to consider whether there is a sound public policy reason for permitting the complete freedom of expression that a grant of absolute immunity provides.... In making that determination, the court must decide as a matter of law whether the alleged defamatory statements are sufficiently relevant to the issues involved in a proposed or ongoing judicial proceeding, so as to qualify for the privilege. *The test for relevancy is generous, and 'judicial proceeding' has been defined liberally to encompass much more than civil litigation or criminal trials.*"

***13** (Citation omitted; emphasis added; internal quotation marks omitted.) *Hopkins v. O'Connor,* supra, 282 Conn. 839.

As to the first of the plaintiff's arguments, the court concludes that the communications he complains of were uttered or published in the course of judicial proceedings. The Restatement (Second) of Torts, which our Supreme Court has adopted for the litigation privilege, makes it explicit that judicial proceedings are not confined to hearings in court when the judge is on the bench. It applies to "communications preliminary to a proposed judicial proceeding, or in the institution of, or during the course and as part of, a judicial proceeding." 3 Restatement (Second) of Torts §§ 586, 587. This includes "conferences and other communications preliminary to the proceeding." Id., § 586, cmt. a. "There is no requirement under Connecticut jurisprudence that to be considered part of a judicial proceeding, statements must be made in a courtroom or under oath or be contained in a pleading or other documents submitted to the court." *Kenneson v. Eggert,* 196 Conn. App. 773, 783, 230 A.3d 795 (2020). Indeed, Connecticut courts have held that judicial proceedings include a statement in a police officer's incident report that could have resulted in a commitment proceeding in probate court, a letter sent by a trustee to a beneficiary during the pendency of (not preliminary to) a lawsuit, and letters exchanged between opposing counsel during litigation, including probate proceedings. *Hopkins v. O'Connor,* supra, 282 Conn. 831-42; *Tyler v. Tatoian,* supra, 164 Conn. App. 94; *Oppenheim v. Erwin*, Superior Court, judicial district of New Haven, Docket No. CV-00-0441611-S (March 13, 2002, *Booth, J.*).

The communications here occurred in statements during probate court hearings, in filings made with the probate court, and in emails or phone calls with other lawyers and the Office of the Attorney General. Based on the Restatement and the caselaw discussed above, this court finds that they were made in the course of the *In re Espirito Estate* matter pending before the Wallingford probate court – a judicial proceeding. The one possible exception would be the grievance filed by Pearce, but that too was part of a judicial proceeding. Our appellate courts have held that grievance proceedings are quasi-judicial such that the litigation privilege applies to statements made by parties filing grievances and attorneys responding to those grievances. *Carter v. Bowler,* supra, 211 Conn. App. 125; *Cohen v. King,* supra, 189 Conn. App. 90-91; *Field v. Kearns,* 43 Conn. App. 265, 272-73, 682 A.2d 148, cert. denied, 239 Conn. 942, 684 A.2d 711 (1996), overruled in part on other grounds, *Rioux v. Barry,* 283 Conn. 338, 927 A.2d 304 (2007). See also *Hopkins v. O'Connor,* supra, 282 Conn. 833 (citing an Oregon Supreme Court case for the proposition that even when a grievance does not result in a formal hearing, the privilege applies).

The plaintiff also argues that the communications at issue did not pertain to or relate to the issues being considered by the probate court in its hearings. Contrary to this cramped reading of the law, our Supreme Court has characterized the relevance requirement as "generous." See, e.g., *Dorfman v. Smith,* supra, 342 Conn. 601; *Hopkins v. O'Connor,* supra, 282 Conn. 839. The privilege applies if the statement "has some reference to the subject matter of the proposed or pending litigation, although it need not be strictly relevant to any issue involved in it...." *Hopkins v. O'Connor,* supra, 833 (quoting 3 Restatement (Second) of Torts at § 586 cmt. c).

***14** A California case applied the litigation privilege to facts that were similar to those in this case. In *Rohde v. Wolf*, 154 Cal. App. 4th 28, 64 Cal. Rptr. 3d 348 (2007), the California Court of Appeal held that the litigation privilege applied to assertedly defamatory voicemail statements made by the attorney for a brother involved in a dispute with his sister over distribution of their deceased father's assets, where the attorney accused the plaintiff of conspiring to defraud her brother and stated his intention to "take appropriate action." (Internal quotations omitted.) Id. at 36. The Court of Appeal reversed a trial court that did not grant

the anti-SLAPP motion to strike the sister's suit against the attorney. The Court of Appeal reasoned that the statements were made in connection with an asset that was the subject of the dispute in which both parties had threatened litigation. "In short, the spectre of litigation loomed over all communications between the parties at that time. Thus, the messages concerning the subject of the dispute and threatening appropriate action in that context had to be in anticipation of litigation contemplated in good faith and under serious consideration." (Citations omitted; internal quotations omitted.) Id. at 36–37.

Each of the communications here, including those that alleged that the plaintiff had borrowed funds from the estate or that funds were missing, all had some reference to the estate that was the subject of the probate litigation. They all are protected by the litigation privilege, and the court concludes that the plaintiff has not established probable cause that he will prevail on the merits of his complaint.

C. The Exception for Abuse of the Legal System Does Not Apply Here.

The plaintiff argues that absolute immunity should not apply here because the defendants made improper use of the judicial system. Our courts have recognized "a distinction between attempting to impose liability upon a participant in a judicial proceeding for the words used therein and attempting to impose liability upon a litigant for his improper use of the judicial system itself." *MacDermid, Inc. v. Leonetti,* 310 Conn. 616, 629, 79 A.3d 60 (2013) (holding that the litigation privilege did not bar a suit alleging retaliation against employees exercising their workers compensation rights). In those situations where a defendant is being sued for words used in a judicial proceeding, our courts have applied the privilege and dismissed the action. By contrast, where a defendant is being sued for causes of action such as abuse of process or vexatious litigation because they made improper use of the judicial system, our courts have declined to apply absolute immunity. Id.

Put another way, claims such as abuse of process or vexatious litigation challenge the underlying purpose of the litigation; whereas claims such as defamation and fraud challenge the attorney's role as an advocate for his or her client. *Simms v. Seaman,* supra, 308 Conn. 546. Indeed, an abuse of process claim "must allege the improper use of litigation to accomplish a purpose for which it was not designed." (Internal quotation marks omitted.) Id. (quoting *Mozzochi v. Beck,* 204 Conn. 490, 494, 529 A.2d 171 (1987)). And a vexatious litigation claim must allege that "the defendant acted primarily for a purpose other than that of bringing an offender to justice and without probable cause." Id. (citing *Rioux v. Barry,* supra, 283 Conn. 347).

The complaint in this case does not include any causes of action that challenge the underlying purpose of the probate matter. Instead, each cause of action is based on the communications made by Connecticut Hospice's lawyers and by Pearce. Although the plaintiff attempts to argue that the findings of the grievance panels in the two grievances he brought against Pearce and Attorney Knott suffice to allege improper use of the judicial system, the court disagrees. Those alleged findings that they "engaged in misconduct" were based on the words they used in communications. The litigation privilege still protects the speakers of those words and the speakers' clients with the dismissal of this lawsuit.

Having determined that the defendants have met their burden on the first part of the analysis and that the plaintiff cannot meet his burden on the second part of the analysis, this court dismisses the complaint. The defendants also seek their reasonable attorneys' fees and costs, to which they are entitled under subsection (f) (1) of the statute. The court orders the defendants to submit affidavits of those fees and costs that would meet the standards of the statute and *Smith v. Snyder,* 267 Conn. 456, 839 A.2d 589 (2004). Those affidavits are due by February 10, 2023. The plaintiff may file any opposition to those affidavits on or before February 24, 2023. If necessary, the court will schedule a hearing on the award of attorneys' fees and costs after receipt of these filings.

CONCLUSION

***15** For the foregoing reasons, this court grants the special motions to dismiss filed by both defendants, Connecticut Hospice and Pearce.

All Citations

Not Reported in Atl. Rptr., 2023 WL 370988

Footnotes

1 The exhibit to the complaint consists of only one page of this grievance. There is no information about the parties, venue or date of the grievance. There also is no information about the outcome of the grievance. Although Pearce's attorney provided additional information at the oral argument, the court cannot consider that. Representations by counsel are not evidence. See, e.g., *Martin v. Liberty Bank*, 46 Conn. App. 559, 562-63, 699 A.2d 305 (1997).

2 The plaintiff conflates the defendant's absolute immunity defense based on the litigation privilege with the requirements of the anti-SLAPP statute. The court will address that absolute immunity defense later in this memorandum when it analyzes whether there is probable cause that the plaintiff will prevail. "The scope of the protections afforded to litigation-related communications under the anti-SLAPP statute and that afforded by the litigation privilege ... are not identical. The two statutes 'are substantively different statutes that serve quite different purposes....' " *Feldman v. 1100 Park Lane Associates*, 160 Cal. App. 4th 1467, 1479, 74 Cal. Rptr. 3d 1 (2008). "[T]he litigation privilege is an entirely different type of statute than [the anti-SLAPP statute]. The former enshrines a substantive rule of law that grants absolute immunity from tort liability for communications made in relation to judicial proceedings; the latter is a procedural device for screening out meritless claims." (Citation omitted.) *Jarrow Formulas, Inc. v. LaMarche*, 31 Cal. 4th 728, 74 P.3d 737 (2003). Nevertheless, California courts do consider the litigation privilege when construing whether a communication falls within the scope of the right to petition section of their anti-SLAPP statute. See, e.g., *Neville v. Chudacoff,* 160 Cal. App. 4th 1255, 1263, 73 Cal. Rptr. 383 (2008); *Navellier v. Sletten,* 106 Cal. App. 4th 763, 770, 131 Cal. Rptr. 2d 201 (2003).

3 California's statute defines "an act in furtherance of the defendant's right of petition the government or free speech in connection with a public issue" to include: "(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 the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." California Code of Civil Procedure Section 425.16, subdivision (e).

4 California courts have held that their "reasonably relevant" standard for applying the litigation privilege is "analogous" to the "in connection with" standard for their anti-SLAPP statute. See, e.g., *Neville v. Chudacoff*, supra, 160 Cal. App. 4th at 1266.

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