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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 42

HON. ELIHU M. BERLE, JUDGE

SAMANTHA RONSON,
PLAINTIFF,

V.

SUNSET PHOTO AND NEWS LLC;
JILL ISHKANIAN; MARIO LAVANDEIRA
d/b/a PEREZ HILTON, and DOES
1-10, inclusive,
DEFENDANTS.

CERTIFIED COPY

BC 374174

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, NOVEMBER 1, 2007

APPEARANCES:

FOR PLAINTIFF
SAMANTHA RONSON:

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FOR DEFENDANT
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LINDA NISHIMOTO, CSR 9147
OFFICIAL REPORTER

1 CASE NUMBER: BC 374174
2 CASE NAME: SAMANTHA RONSON, ET AL.,
3 VERSUS
4 SUNSET PHOTO AND NEWS LLC
5 LOS ANGELES, CALIFORNIA THURSDAY, NOVEMBER 1, 2007
6 DEPARTMENT 42 HON. ELIHU M. BERLE, JUDGE
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 REPORTER: LINDA NISHIMOTO, CSR NO. 9147
9 TIME: A.M. SESSION

10 ****

11 (In open court:)

12 THE COURT: Calling the case of Ronson versus
13 Sunset Photo.

14 MR. JEFFRIES: Wayne Jeffries of Bingham McCutchen
15 for plaintiff.

16 MR. FREEDMAN: Bryan Freedman, Freedman and
17 Taitelman, on behalf of defendant Mario Lavandeira.

18 THE COURT: Good morning. The matter is here on a
19 motion to strike the complaint pursuant to Code of Civil
20 Procedure section 425.16.

21 Does anyone wish to be heard on this?

22 MR. JEFFRIES: No, your Honor.

23 MR. FREEDMAN: I just want to make sure, your
24 Honor, that you received our supplemental brief that was
25 filed in support of the motion to strike.

26 THE COURT: Yes.

27 Let me ask a couple of questions on
28 procedure.

1 First of all, I received a document which
2 seemed to be quite strange. This was a request for
3 dismissal of the complaint of the entire action and it was
4 signed by Mr. Martin Garbus, and Mr. Martin Garbus, of
5 course, is not counsel of record. Although he was granted
6 permission to appear pro hac vice, it was only for the
7 limited purpose of appearance with regard to the anti-SLAPP
8 motion.

9 Do you know anything about this piece of
10 paper?

11 MR. JEFFRIES: I am not sure I have seen that piece
12 of paper, your Honor. I know he wrote the court a letter.
13 I saw a copy of that, but I don't recall seeing a request
14 for dismissal by Mr. Garbus.

15 THE COURT: I consider this to be a nullity and of
16 no significance whatsoever because Mr. Garbus is not
17 attorney of record and he has no authority to dismiss this
18 case.

19 I take it from the appearance here, that as
20 far as Bingham McCutchen is concerned, the case is still
21 pending and you are attorney of record?

22 MR. JEFFRIES: Yes, your Honor. I am attorney of
23 record and the case is still pending.

24 THE COURT: And you did not dismiss the case as
25 attorney of record?

26 MR. JEFFRIES: No, your Honor.

27 THE COURT: And then the next thing I received was
28 a letter, which the court does not accept any letters, but

1 we have to acknowledge that we did receive a letter, but it
2 is of no legal significance. It was some letter and counsel
3 was copied on it, Mr. Freedman and Mr. Jeffries, and I am
4 not going to state what is in the letter because it's of no
5 significance. The way to file documents in a court
6 proceeding is to file appropriate pleadings, not to send
7 letters.

8 So with all of that, we will proceed with
9 the hearing today. I do note one other thing, which is that
10 at the hearing held on October 10, 2007, the court gave
11 plaintiff permission to file additional opposition to the
12 anti-SLAPP motion by October 24th and then defendant would
13 have permission to file an additional reply by October 29th.
14 I did receive additional papers from the defendant. I did
15 not receive any additional opposition from the plaintiff.

16 Is it correct that plaintiff did not file
17 anything in addition?

18 MR. JEFFRIES: That is my understanding, your
19 Honor.

20 THE COURT: Okay, anything further?

21 Plaintiff, you indicated, Mr. Jeffries, that
22 you don't have anything further to say.

23 Defendant, Mr. Freedman, do you have
24 anything to add?

25 MR. FREEDMAN: Not unless the court has any
26 specific questions with respect to the motion to strike.

27 THE COURT: Thank you.

28 Counsel, why don't you take a seat? This

1 will take a few moments.

2 In this case, plaintiff claims that
3 defendant published an article with defamatory statements
4 about plaintiff. In essence, the plaintiff alleges that
5 there was an article in Celebrity Babylon stating, among
6 other things, that:

7 "Celebrity Babylon has learned
8 that while her DJ pal Samantha Ronson,
9 29," that is plaintiff in this case,
10 "looks like she's there to help her pal
11 through thick and thin, she's really
12 making a tidy profit on the side,
13 shilling Lohan, 20, out to
14 photographers..."

15 Basically I guess plaintiff is alleging that
16 the article states that plaintiff is tipping off
17 photographers to where Lindsay Lohan would be available so
18 that the photographers could take pictures of her.

19 Also the article goes on, among other
20 things, to say that plaintiff was holding cocaine that was
21 found in Lindsay Lohan's car. It goes on to state a number
22 of other allegations about the relationship of the parties.

23 Based upon that article, plaintiff filed a
24 complaint for damages for libel against defendants for
25 publishing and republishing statements contained in that
26 article.

27 Defendant moves to strike the complaint
28 brought by plaintiff Samantha Ronson and seeks an award of

1 attorneys' fees and costs associated with a motion to
2 strike.

3 A motion to strike is made on the grounds
4 that the complaint is barred under Code of Civil Procedure
5 section 425.16 because it arises out of defendant's exercise
6 of the constitutional right of free speech.

7 The motion made by the defendant is under
8 Code of Civil Procedure section 425.16 which is the SLAPP
9 statute. That statute says that:

10 "The legislature finds and
11 declares that there has been a
12 disturbing increase in lawsuits brought
13 primarily to chill the valid exercise of
14 the constitutional rights of freedom of
15 speech and petition for the redress of
16 grievances. The Legislature finds and
17 declares that it is in the public
18 interest to encourage continued
19 participation in matters of public
20 significance, and that this
21 participation should not be chilled
22 through abuse of the judicial process.
23 To this end, this section shall be
24 construed broadly."

25 That statute goes on to state
26 that:

27 "A cause of action against a
28 person arising from any act of that

1 person in furtherance of the person's
2 right of petition or free speech under
3 the United States or California
4 constitution in connection with a public
5 issue shall be subject to a special
6 motion to strike, unless the court
7 determines that the plaintiff has
8 established that there is a probability
9 that the plaintiff will prevail on the
10 claim."

11 Subsection (e) of that statute
12 states that:

13 "As used this section, 'act in
14 furtherance of a person's right of
15 petition or free speech under the United
16 States or California constitution in
17 connection with a public issue'
18 includes: (1) any written or oral
19 statement or writing made before a
20 legislative, executive, or judicial
21 proceeding, or any other official
22 proceeding authorized by law; (2) any
23 written or oral statement made in
24 connection with an issue under
25 consideration or review by a
26 legislative, executive, or judicial
27 body, or any other official proceeding
28 authorized by law; (3) any written or

1 oral statement or writing made in a
2 place open to the public or a public
3 forum in connection with an issue of
4 public interest; (4) or any other
5 conduct in furtherance of the exercise
6 of the constitutional right of petition
7 or the constitutional right of free
8 speech in connection with a public issue
9 or an issue of public interest."

10 Moving parties have the initial burden to
11 demonstrate that the cause of action that is alleged by the
12 plaintiff is subject to a special motion to strike, citing
13 Martinez versus Metabolife (2003), 113 Cal.App.4th 181, 186,
14 and Fox Searchlight Pictures Inc. versus Paladino (2001)
15 89 Cal.App.4th 294.

16 Specifically, the courts must decide whether
17 the moving parties have made a prima facie showing that the
18 attacked claims arise from a protected activity, including
19 defendant's right of petition or free speech, under a
20 constitution, in connection with issues of public interest,
21 citing Soukup versus The Law Offices of Herbert Hafif (2006)
22 39 Cal.4th 260.

23 Moving parties can satisfy the burden under
24 CCP 425.16 by showing that the statements were made before a
25 legislative, executive, or judicial proceedings, or made in
26 connection with matters being considered in such
27 proceedings, or secondly, the statements were made in a
28 public forum, or other conduct in furtherance of the

1 exercise of the constitutional rights of petition or free
2 speech, in connection with issues of public interest, citing
3 Equilon versus Consumer Cause (2002) 29 Cal.4th 53.

4 I note that public interest involves more
5 than mere curiosity, a broad and amorphous interest, or
6 private financial interest communicated to a large number of
7 people, but rather instead concerns a substantial number of
8 people, some closeness between the statements and the public
9 interest, and a focus upon the communications as being the
10 interest and upon a private controversy, citing McGarry
11 versus University of San Diego.

12 Once the moving parties have satisfied their
13 burden, the burden shifts to the opposing party to
14 demonstrate a probability of prevailing on the merits of the
15 complaint, citing Equilon versus Consumer Cause (2002)
16 29 Cal.4th 53, and Matson versus Dvorak (1995) 40 Cal.4th
17 539.

18 "An action may not be dismissed
19 under this statute if the plaintiff has
20 presented admissible evidence that, if
21 believed by the trier of fact, would
22 support a cause of action against the
23 defendant." Citing Taus versus Loftus
24 (2007) 40 Cal.4th 683.

25 In terms of the burden of the plaintiff:

26 "The plaintiff need only
27 establish that his or her claim has
28 'minimal merit'...to avoid being

1 stricken as a SLAPP." Citing Soukup
2 versus Law Offices of Herbert Hafif
3 (2006) 39 Cal.4th 260.

4 Further, plaintiff need not address all the
5 alleged theories in order to show that a cause of action has
6 some merit. The opposing party's burden as to an anti-SLAPP
7 motion is like that of a party opposing a motion for summary
8 judgment.

9 In this case, as I already noted, the
10 complaint filed by plaintiff is based upon a claim of libel.
11 The elements for that claim are: Intentional publication of
12 a statement of fact that is false, defamatory, unprivileged,
13 and has a natural tendency to injure or that causes special
14 damages.

15 Defendant has the burden to show that the
16 action is within the ambit of 425.16, that is, that
17 defendant's challenged acts were taken in furtherance of the
18 exercise of the constitutional right of petition or free
19 speech in connection with a public issue.

20 In this case, the defendant has presented
21 evidence that plaintiff is a musical performer who sells
22 albums and performs in concerts as far as supplying evidence
23 that plaintiff herself is a public figure or a limited
24 public figure for the purposes of the law of defamation.

25 In fact, in the complaint, plaintiff herself
26 alleges that she is a disc jockey who regularly performs at
27 events involving celebrities and major corporate events and
28 performs on entertainment shows.

1 Plaintiff herself alleges she has also been
2 associating in public with a highly-publicized celebrity in
3 this case, in particular, namely, Lindsay Lohan.

4 The court concludes that reports about a
5 celebrity, or person associating with one, someone who
6 voluntarily injects herself into the public eye qualifies as
7 being a public figure, or at a minimum, a limited public
8 figure, and qualifies as subject matter of public interest,
9 citing Hall versus Time Warner Inc., (2007) 153 Cal.App.4th
10 1337.

11 In addition, the accusation of the plaintiff
12 with regard to making available illegal drugs, that alone
13 implicates the public interest. As stated in Lieberman
14 versus KCOP Television (2003) 110 Cal.App.4th 156, 165:

15 "Few problems affecting the
16 health and welfare of our population,
17 particularly our young, cause greater
18 concern than the escalating use of
19 controlled substances...We have no doubt
20 that the unlawful dispensing of
21 controlled substances is an issue of
22 great public interest."

23 As to someone who injects herself in the
24 public eye by volunteering to be an associate of a celebrity
25 or involved in public exhibitions, the court in Seelig
26 versus Infinity Broadcasting Corporation (2002)
27 97 Cal.App.4th 798 has stated that:

28 "...By having chosen to

1 participate as a contestant in" the
2 particular show involved in that case
3 "plaintiff voluntarily subjected herself
4 to inevitable scrutiny and potential
5 ridicule by the public and the media."

6 Thus, as stated in that case, an individual
7 may make herself a public figure for defamation purposes and
8 for public issues under 425.16 if she voluntarily injects
9 herself into a public matter or associates with public
10 figures.

11 The complaint in this case is based upon
12 publications about the plaintiff regularly injecting herself
13 into the public eye by traveling with a highly-publicized
14 celebrity and driving vehicles to paparazzi to provide photo
15 opportunities. The allegations involve topics of interest
16 to a large segment of the public, including whether young
17 celebrities are supplied with illegal drug substances.

18 Plaintiff herself admits in paragraph 11 of
19 the complaint that there was "widespread media attention."

20 Defendants supplied various publications
21 about the alleged incident between plaintiff and Lindsay
22 Lohan to show a public interest and to show a public figure
23 being involved.

24 The court does not take judicial notice of
25 the facts contained in those publications. That would be
26 improper. The court would not accept any of those
27 statements for the truth of the contentions, but the court
28 does accept those publications for the purpose of noting

1 that there are publications that contained such information,
2 the mere fact of the existence of such publications, but not
3 necessarily for the truth of any matters contained in those
4 publications.

5 In any event, the plaintiff did not object
6 to the court considering those publications.

7 First, with regard to whether there was a
8 public forum, in this age of electronic media, a website may
9 be a public forum -- especially a popular blog site with
10 reports on celebrities would be considered a public forum.

11 The court does conclude that the statements
12 attributed to defendants are statements made in a public
13 forum, that is, on this blog site, in connection with an
14 issue of public interest and that is discussing matters
15 related to a celebrity and those who associate with
16 celebrities and in discussing the issue of drugs.

17 Therefore, defendants have met their burden
18 to show that this action, the allegations of the complaint
19 and the gravamen of the complaint, concerning statements
20 made by the defendants about someone who is a close
21 associate of a celebrity and who appears with the celebrity
22 in public, that those statements are within the ambit of
23 Code of Civil Procedure section 425.16, that is, they do
24 relate to a matter of public interest in a public forum.

25 Based upon that, the burden shifts to the
26 plaintiff to show the probability of prevailing on the
27 merits of this case.

28 Plaintiff's claim is for defamation. With

1 regard to the defamation allegations in the complaint, the
2 elements of defamation and the presumed damages are apparent
3 in the article, attributing to plaintiff unlawful possession
4 of a controlled substance and disparaging plaintiff
5 according to the plaintiff's arguments and allegations.

6 Plaintiff did submit declarations and
7 specific declarations denying the statements contained in
8 the articles and denying touching any cocaine anywhere and
9 denying that she was alerting the paparazzi for photographic
10 opportunities of the celebrity.

11 The issue of the public figure that I
12 already addressed is an important issue with regard to a
13 defamation claim because if there is a public figure or
14 limited public figure, then in order to succeed on the
15 claim, the plaintiff has to show malice with respect to any
16 defamatory statement made by the defendant.

17 One may be a general or limited public
18 figure for the purposes of defamation law, and in order to
19 succeed on a defamation claim against the defendant where
20 one is a public figure, the plaintiff must show that the
21 statements were made by the defendant with knowledge of the
22 falsity or with reckless disregard of that, and a limited
23 public figure must show that same thing.

24 To the extent the communications relate to
25 the public figure's role in the public controversy, the
26 plaintiff's declaration, that is, the evidence submitted by
27 the plaintiff in opposition to the defendants' evidence, the
28 plaintiff's declaration failed to show that she is not a

1 public figure or limited public figure as far as the issues
2 alleged in the complaint. She hasn't negated the
3 requirement to show malice because plaintiff has not in
4 effect disputed that at the very minimum, she is a limited
5 public figure.

6 To the contrary, plaintiff boasted of her
7 own public notoriety, really elevating herself to a public
8 figure. She states in paragraph 2:

9 "Ronson is a professional disc
10 jokey (DJ) who is regularly hired to
11 perform at exclusive parties and events.
12 Ronson has previously performed at
13 events such as pop star Jessica
14 Simpson's birthday party; corporate
15 events for Blender, Maxim, PlayStation
16 at the Superbowl and ElleGirl; and
17 entertainment awards shows including the
18 Video Music Awards in Miami, Sundance,
19 and the Independent Film Channel
20 Awards."

21 Therefore, plaintiff by her own allegations
22 is a public figure, or at a minimum, a limited public
23 figure, with regard to the allegations of the complaint.

24 By associating with a celebrity, plaintiff
25 is at least a public figure for such limited purposes as set
26 forth in the case of Hall versus Time Warner (2007)
27 153 Cal.App.4th 1537.

28 With respect to plaintiff's burden to show

1 that defendants made any statements with malice, which as I
2 said is a necessary requirement for plaintiff to be able to
3 prevail given the fact plaintiff is at the very minimum a
4 limited public figure, if not a public figure herself,
5 plaintiff has not presented evidence to show that any
6 statements made by the defendants were made with malice or
7 reckless indifference.

8 Plaintiff has not filed any supplemental
9 papers, notwithstanding the fact that the court gave
10 plaintiff an opportunity to take the deposition of defendant
11 and to file supplemental papers. Thus, plaintiff has not
12 met her burden to show a probability of prevailing even on
13 the minimum evidentiary standard that is required in a SLAPP
14 motion, and that is the standard of showing that she can
15 establish the elements of her case even by the standard that
16 is required of oppositions to summary judgment motions.

17 Defendant having met the burden to show that
18 this action involves statements made in a public forum on a
19 matter of public interest involving a public figure and the
20 burden having shifted to the plaintiff on the defamation
21 claim of a public figure, the court finds that plaintiff has
22 not met her burden of showing any evidence of malice, and,
23 therefore, the court is going to grant the motion of the
24 defendant to strike the complaint under Code of Civil
25 Procedure 425.16.

26 I would ask the defendant to give notice.

27 Thank you, counsel.

28 MR. JEFFRIES: Thank you, your Honor.

1 MR. FREEDMAN: Thank you, your Honor.

2 Your Honor, we will submit a motion for
3 attorneys' fees.

4 THE COURT: Yes. Thank you. Submit it on regular
5 notice.

6 Thank you, counsel.

7 MR. JEFFRIES: Thank you, your Honor.

8 (Proceeding adjourned.)

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