

Commonwealth of Massachusetts

BARNSTABLE, ss.

SUPERIOR COURT

No.

08-491

Re: Joseph F. Dugas et al v. Peter Robbins et al

Special motions to dismiss pursuant to the anti-SLAPP provisions G.L.c. 231, §59H are governed by a two-part test that is well established by Massachusetts courts. In the first step, the moving party, Robbins, must show that the claims against him are based on petitioning activity alone and have no substantial basis other than petitioning activities. If this threshold step is satisfied, then the burden shifts to the nonmoving parties, Dugas and Revere, to demonstrate that the moving party's petitioning activity was without any reasonable factual support or basis in law, and that the moving party's acts caused actual injury to the responding party.

The Appeals Court established limitations on the scope of petitioning activity in Global Naps, Inc. v. Verizon New England, Inc., 63 Mass. App. Ct. 600 (2005). The Court held "[t]hat a statement concerns a topic that has attracted governmental attention, in itself, does not give that statement the character contemplated by the statute." Id. at 605. It further held that the anti-SLAPP statute "does not protect tangential statements intended, at most, to influence public opinion in a general way unrelated to governmental involvement." Id. at 607. Robbins' own deposition statements indicate that in his blog he was not personally trying to encourage any review or effectuate change with respect to the dredging of Barnstable harbor. During his deposition, Robbins was asked if he was attempting to influence the outcome of a governmental proceeding. He stated in response: "No. I don't think that was my intent, no. If someone's response or interest in it generated that, did that, and the harbor could get dredged sooner, well, that would be wonderful." This is the type of tangential activity contemplated by the Appeals Court in Global Naps and determined to be outside the scope of protected petitioning activity under the anti-SLAPP statute.

In order to demonstrate that he was engaging in the exercise of petitioning activity, Robbins must show that the conduct being challenged by the plaintiffs, Dugas and Revere, was made in the context of and in order to influence the outcome of a government proceeding or to obtain review from a governmental entity and that the purpose of Robbins' activity is to seek redress from the government on his own behalf. See Kobrin v. Gastfriend, 443 Mass. 327, 330 (2005). Petitioning activity may also be evidenced by facts showing that Robbins' statements were reasonably likely to enlist public participation in an effort to effect consideration or review from a governmental entity. Robbins' deposition testimony demonstrates that his statements were not motivated by these types of petitioning activities.

Additionally, the commercial aspect of the website also places the defendant's statements outside the purview of the anti-SLAPP statute. In Cadle v. Schlichtman, 448 Mass. 242 (2007),

the Supreme Judicial Court upheld a Superior Court's denial of a special motion to dismiss brought under the anti-SLAPP statute. That case similarly involved a defamation suit arising from comments made on a website, and the court held that the statements were not made in the course of petitioning activity within the meaning of G.L.c. 231, §59H. Although the website in Cadle did not have an interactive component comparable to the comments section of the on-line newspaper involved in the instant case, the commercial nature of the Cadle website was considered a prevalent factor in denying the special motion to dismiss.

The Cadle decision further distinguished the holding in McDonald v. Paton, 57 Mass. App. Ct. 290 (2003), a case which, on its face, would seem to provide a basis for dismissal in the present case. In McDonald, the Appeals Court found that the defendant's affidavit established that her website was created "as a forum for speech by citizens about issues of public and political concern," id. at 295, and served as a technological interactive forum on issues related to town governance. The court in Cadle found that a website launched as a commercial enterprise, however, was not protected by the anti-SLAPP statute since it was not inherently petitioning activity. In the instant case, the defendant's article appeared in a for-profit news website. Regardless of his characterization as a blogger or reporter, the defendant received compensation for his contribution. Moreover, the object of the newspaper is to generate profits, and any public discourse resulting from the articles was merely tangential. Thus, the statements made by the defendant are not within the protection for petitioning activity under G.L.c. 231, §59H.

Based on my complete review of the submissions to date, I find that the complained-of conduct does not fall within the definition of petitioning activity and for that reason, this action should not be dismissed pursuant to G.L.c. 231, §59H.

ORDER

For the above-stated reasons, Robbins' special motion to dismiss is **DENIED**.

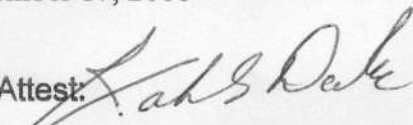
By the Court, (Rufo, J.)



John S. Dale, 1st Assistant Clerk

Dated: November 17, 2008

A true copy, Attest:



1st Asst. Clerk

1st Asst. Clerk