



DECEMBER 2019

Appellate Reports

Plaintiffs' law firm sues client for defamation in website reviews, trial court grants anti-SLAPP motion against firm, upheld on appeal

BY JEFFREY I. EHRLICH

Anti-SLAPP; protected activities; reviews posted on websites: *Abir Cohen Treyzon Salo, LLP v. Lahiji* (2019) 40 Cal.App.5th 882 (Second Dist., Div. 2.)

After a client fired her attorney and his firm, the firm placed a lien on the client's further recovery and then sued the client's daughter for defaming them in several online reviews. The daughter moved to dismiss the defamation claim under the anti-SLAPP law and the trial court granted the motion. Affirmed.

Nahid Lahiji (Nahid) retained the law firm and attorney Cohen to represent her in a dispute with her homeowner's insurer. The firm obtained some preliminary recovery, from which Nahid authorized the firm to retain \$120,000. She later became dissatisfied with the firm's representation and terminated it. The firm then placed a lien on any further recovery from the insurer on a quantum meruit basis. Nine days later, a person using a Yelp account with the name "AI L." and with a photograph of Nahid's daughter, Arta Lahiji (Arta) posted a review of the firm and Cohen (the Yelp review). The review recounted the case and included the following statements: That the firm was "underhanded and shady," was "unprofessional and unethical," used "scare tactics," and had an "awful moral compass." The reviewer warned readers to "stay away from this firm."

On November 21, 2017, an "anonymous" user posted an identical review on Avvo, an online lawyer directory. On December 13, 2017, "Angela Helder" posted a review on the firm's Facebook page that read: "Unprofessional and unethical group of attorneys ... will botch your home owners insurance claim." On December 14, 2017, reviews identical to the Yelp review were posted on the website Ripoff Report by "Nancy" in "Redondo Beach" and on Google by "Nahid Lahiji."

Cohen and the firm sued Arta for defamation. Although the above

recounted postings purported by name or content to be from Nahid, Cohen and the firm alleged a "good faith belief" that Arta was the poster. Cohen and the firm sought compensatory damages, punitive damages and a post-judgment order enjoining Arta from publishing further defamatory statements and requiring her to remove the existing posts.

After the suit was filed, Nahid sent an email to Cohen explaining that she, and not her daughter, had posted the various reviews. Rather than add Nahid as a defendant, Cohen and the firm proceeded to promulgate discovery against Arta. Specifically, they served her with one set of general interrogatories and with 119 special interrogatories.

Arta filed an anti-SLAPP motion seeking dismissal of the defamation claim on the grounds that (1) the postings constituted "protected activity" within the meaning of the anti-SLAPP law, and (2) Cohen and the firm could not establish that the defamation claim had minimal merit. In support of the motion, Nahid submitted a sworn declaration attesting that *she* had "left [the] reviews" underlying the defamation claim and Arta submitted a sworn declaration attesting that she had not "post[ed]" any of the reviews at issue but was "aware" of Nahid's posts on Yelp, Avvo, Ripoff Report, and Google.

The trial court granted the motion. It ruled that posting the online reviews constituted "protected activity" within the meaning of the anti-SLAPP law. The court then ruled that Cohen and the law firm had not carried their burden of showing that their defamation claim had minimal merit. Cohen's and the firm's "assertions that ... Arta ... posted the social media statements at the heart of [their] [c]omplaint," the court reasoned, "are speculative and not supported by the evidence in the record."

The Court of Appeal affirmed. The court first rejected the firm's argument that,

because Arta denied making the posts, she could not establish that she had engaged in any protected activity in furtherance of her right to free speech or her right to petition. The court noted that this argument had been rejected in an earlier case, which held that a defendant who denies engaging in the alleged conduct "may rely on the plaintiff's allegations alone" in assessing whether the conduct at issue is protected activity. If the rule were otherwise, anti-SLAPP relief would be unavailable when a plaintiff alleges a baseless claim, which is precisely the kind of claim that the anti-SLAPP law was intended to address.

The court also agreed with the trial court's conclusion that Cohen and the firm did not make a prima facie showing that Arta was legally responsible for the postings that underly their defamation claim. The posts themselves do not establish that Arta was the author or poster, as none of the posts are in Arta's name and their content suggests that the author was the one represented by Cohen and the firm – that is, Nahid. The court then examined the evidence relied on by the firm to suggest otherwise and found that it was insufficient. "Because, . . . Cohen and the firm have not advanced anything beyond speculation that Arta was the author of the posts at issue, their defamation suit against her lacks minimal merit regardless of the persuasiveness of the evidence offered by Arta."

Jeffrey I. Ehrlich is the principal of the Ehrlich Law Firm, in Claremont, California. He is a cum laude graduate of the Harvard Law School, a certified appellate specialist by the California Board of Legal Specialization, and a member of the CAALA Board of Governors. He is the editor-in-chief of Advocate magazine, CAOC's 2019 Street Fighter of the Year and two-time CAALA Appellate Lawyer of the Year.



Ehrlich