

**LAW & MOTION
DEPARTMENT 18
HONORABLE HELEN I. BENDIX**

Hearing Date: 10/24/08
Case Name: GROGAN v. PAOLELLA
Case No.: BC391778
Motion: MOTION TO STRIKE COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16.
Moving Party: DEFENDANTS JOHN TRIMARCO; JACK TRIMARCO & ASSOCS. POLYGRAPH/INVESTIGATIONS, INC.
Opposing Party: PLAINTIFF.
Action Filed: 5/30/08

Tentative Ruling

Plaintiff alleges three causes of action:

- 1. DEFAMATION;**
- 2. INVASION OF PRIVACY(FALSE LIGHT); and**
- 3. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.**

These causes of action are based on plaintiff's allegations that defendants communicated the following defamatory statements in different media:

On or about February 12, 2008, PAOLLELA wrote a letter to TRIMARCO that contained the following false, malicious, and libelous statements:

- a. After approximately 6-weeks of training, I gave Mr. Grogan an 'honorary completion' certificate. I had no idea that he wanted to be an examiner and go into the business as an examiner";**
- b. "I had to let Mr. Grogan go because of his 'unauthorized advances' towards female students"; and**
- c. "Even though Mr. Grogan has lost his P.1. & P.P.O. license, he is using an associate Lisa Javoric . . . to front for him on her website to do private investigations"**

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10. On or about March 7, 2008, TRIMARCO telephoned the Tom Leykis Radio Talk Show which airs on 97.1 FM (the "SHOW"). When TRIMARCO telephoned the show as a listener, the appearing guest of Mr. Leykis was Plaintiff. Plaintiff was invited to appear on the radio and perform a polygraph examination on a television producer. During this telephone call on a national broadcast to potentially millions of listeners TRIMARCO made several false, malicious, and slanderous statements about Plaintiff including but not limited to:

- a. "John Grogan is a fake";
- b. "He is not a polygraph examiner";
- c. "He's been convicted of 26 counts of fraud;
- d. "He's never graduated from a polygraph school";
- e. "You're nothing more than a fraud and you're about to get burned";
- f. "I'm going to get you convicted";
- g. "I'll bring in my proof to the DA in Ventura County"; and
- h. "You perjured yourself."

Shortly after the SHOW aired, HILLIARD posted an article on POLYGRAPH PLACE

entitled: "Issue #142 — 4/18/2008, John Grogan — Part II — Imposter? YES — Swindler? Definitely— Polygraph Examiner? Not by any Stretch of the Imagination."

In that article HILLIARD republished each of the defamatory statements made by TRIMARCO during the SHOW. In addition, HILLIARD wrote that Plaintiff is a "swindler," "imposter," and has "a history of threats, harassment and violence." Then on TAG, HILLIARD posted the following false, malicious, and libelous statements regarding Plaintiff:

- a. "John snares the unsuspecting public into his web of deceit" [sic]; and
- b. "[f]raud being perpetrated on the public by John in California and now across the nation."

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(Complaint, ¶¶9 - 11.)

The Trimarco defendants move to strike the entire Complaint against them under the anti-SLAPP statute.

Evidentiary Objections and Defendants' Request for Judicial Notice

Defendants' Request for Judicial Notice is unopposed and on that basis is granted.

The court's rulings on plaintiff's 10/10/08 evidentiary objections and on defendants' 10/17/08 evidentiary objections are indicated in pencil on the objections themselves. The parties are ordered to review those rulings before oral argument. Madam Clerk has the rulings.

First Prong of the Anti-SLAPP Analysis

Defendant bears the initial burden to demonstrate that each cause of action in the complaint falls within the purview of the anti-SLAPP statute. Martinez v. Metabolife Inter. Ins. (2003) 113 Cal.App.4th 181, 186. Specifically, the court must decide if the defendant has made a prima facie showing that plaintiff's claims arise from activity described in Section 425.16(e). Healy v. Tuscan Hills Landscape & Recreation Corp. (2006) 137 Cal. App. 4th 1, 5; Soukup v. Law Offices of Herbert Hafif (2006) 39 Cal.4th 260, 278.

Plaintiff concedes that defendants have met their burden as to the first prong of the anti-SLAPP analysis. See Opposition, p. 5.

Second Prong of the Anti-SLAPP Analysis

If defendant successfully demonstrates that plaintiff's claims fall within the purview of the anti-SLAPP statute, then, the burden shifts to plaintiff to demonstrate a probability of prevailing on the merits of the complaint. Equilon Ent., LLC v. Consumer Cause, Inc. (2002) 29 Cal.4th 53, 67; CCP §425.16(b)(1). To establish such a probability, a plaintiff must demonstrate that the complaint is both legally sufficient and supported by a prima facie showing of facts, which, if credited by the trier of fact, is sufficient to sustain a favorable judgment. Morrow v. Los Angeles Unified School Dist. (2007) 149 Cal.App.4th 1424, 1435. The court's evaluation, thus, includes review of the pleadings and moving and opposing declarations. Equilon Ent., LLC v. Consumer Cause, Inc. (2002) 29 Cal.4th 53, 67; CCP §425.16(b)(2).

"The plaintiff need only establish that his or her claim has 'minimal merit'...to avoid being stricken as a SLAPP." Soukup v. Law Offices of Herbert Hafif (2006) 39 Cal.4th 260, 291. In determining whether plaintiff this court cannot weigh credibility or evidence. Flatley v. Mauro (2006) 39 Cal.4th 299, 326; Mann v. Quality Old Time Service, Inc. (2004) 120 Cal. App. 4th 90, 105-106. Thus, in deciding this anti-SLAPP motion, the court cannot resolve the evidentiary conflicts and credibility issues raised by declarations submitted with the reply papers.

The court finds that plaintiff has satisfied his burden under the second prong of the anti-SLAPP analysis.

The elements of a cause of action for defamation are:

1. Intentional publication by defendant;
2. of statement of fact;
3. that is false;
4. defamatory;
5. unprivileged; and
6. has a natural tendency to injure or that causes special damages.

Taus v. Loftus (2007) 40 Cal.4th 683, 720; Smith v. Maldonado (1999) 72 Cal. App. 4th 637, 645 (also stating: "Reprinting or recirculating a libelous writing has the same effect as an original publication.").

The elements of a cause of action for false-light privacy invasion are:

1. False;
2. unprivileged;
3. publication by writing, printing, or other fixed representation;
4. exposes a person to hatred, contempt, ridicule, or obloquy, or which causes person to be shunned or avoided, or which has a tendency to injure person in his occupation; and
5. malice as to public figures.

Fellows v. Nat'l Enquirer (1986) 42 Cal. 3d 234, 239; M.G. v. Time Warner (2001) 89 Cal. App. 4th 623, 636.

The elements of a cause of action for intentional infliction of emotional distress are:

1. Outrageous conduct by defendant;
2. intentional or reckless causing emotional distress;
3. severe emotional distress; and
4. causation.

Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc. (2005) 129 Cal. App. 4th 1228, 1259.

The court finds that plaintiff's evidence constitutes the minimal showing required under the above case law as to each of the above elements of plaintiff's claims, including (1) defendants' publically making statements that under the circumstances, reasonably could be understood as outrageous statements of untrue facts, such as accusations of criminal convictions and perjury (see, e.g., opposition, exs. 2 (John Grogan decl.) ¶¶1-8; and 3 (John Trimarco depo.) pp. 18-20), (2) with malice beyond mere negligent failure to investigate facts (see, e.g., opposition, exs. 3, pp. 34-37; and ex. 4 (Charles Gilliam decl.), ¶¶4-6), (3) causing damages as to Plaintiff's profession (John Grogan decl., ¶¶9-10).

The motion is denied. Plaintiff is ordered to give notice.