

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/04/08

HONORABLE Raul A. Sahagun

JUDGE

Andrew Nelson

DEPT. C

HONORABLE Antoinette Saldana, Courtroom Asst.

JUDGE PRO TEM

DEPUTY CLERK

Deputy Sheriff

None present

ELECTRONIC RECORDING MONITOR

Reporter

VC051895

BELL CAB COMPANY, INC., ET-AL

VS

SOUTH ASIAN NETWORK INC.

Plaintiff None present
Counsel

Defendant None present
Counsel

NATURE OF PROCEEDINGS:

DEFENDANTS SOUTH ASIAN NETWORK, LOS ANGELES TAXI WORKERS ALLIANCE AND HAMID KHAN, NOTICE OF MOTION TO STRIKE AND SPECIAL MOTION TO STRIKE PLAINTIFFS COMPLAINT PURUSANT TO CALIFORNIA CODE OF CIVIL PROCEDURE 425.16; PLAINTIFFS SPECIAL MOTION FOR DISCOVERY C/F 11-21-08

The Court orders the tentative ruling of the Court to stand and said ruling is now the order of this Court as follows:

1. Defendant's motion to strike the complaint is GRANTED. C.C.P. Section 425.16.

It is the public policy of the State to provide for swift review and dismissal of lawsuits that chill the exercise of speech and petition rights. C.C.P. Section 425.16(b). As stated in its text, the statute is to be given broad interpretation. C.C.P. Section 425.16(a); Sipple v. Foundation for Nat'l Progress (1999) 71 Cal. App.4th 226.

A defendant must make a prima facie showing that the complaint arises from acts in furtherance of its right of petition and free speech. The burden then shifts to plaintiff to show a reasonable possibility of prevailing on the merits. C.C.P. Section 425.16(c);

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NATURE OF PROCEEDINGS:

Equilon Enterprises v. Consumer Causes, Inc. (2002) 29 Cal.4th 53.

Section 425.16(e) sets forth four general categories of protected activity: (1) any statements or writings made before a legislative, executive or judicial or other official proceeding. (2) any statements or writings made in a place open to the public or in a public forum, in connection with an issue of public interest. The list is not exhaustive and is to be broadly construed. Briggs v. Eden Council for Hope & Opportunity (1999) 19 Cal.4th 1106.

Plaintiffs argue that their sole cause of action for unfair business practices is based on the advantage gained by defendant by failing to disclose truthful information on their tax returns. they allege that defendant South Asian Network ("SAN"), a charitable non-profit organization under Internal Revenue Code ("IRC") section 501, engages in lobbying activities and political advocacy which trigger an obligation to pay taxes. Comp., Paragraph 17, 26.

If the allegations of protected activity are only incidental to a claim based on nonprotected activity, merely alleging protected activity as part of the claim does not subject the action to an anti-SLAPP motion. Martinez v. Metabolife Int'l, Inc. (2003) 113 Cal.App.4th 181, 188.

A substantial portion of the subject complaint

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VC051895	Plaintiff	None present
BELL CAB COMPANY, INC., ET-AL	Counsel	
VS	Defendant	None present
SOUTH ASIAN NETWORK INC.	Counsel	

NATURE OF PROCEEDINGS:

describes defendants' participation in the political process. The inquiry is whether those allegations are merely incidental to the claim that defendants filed false tax returns, or whether they constitute the basis for the complaint.

The subject activity includes postings on SAN's website (Comp., Paragraph 26-30, its ongoing project entitled "Los Angeles Taxi Workers Alliance" (or "LATWA", which is separately named as a defendant) (Paragraph 37), "broad-based attacks of governmental and regulatory institutions charged with protecting the public" (Comp., Paragraph 31), appearances by defendant Hamid Khan before the Los Angeles Taxi Commission (Paragraph 32), distributing flyers (Paragraph 32), originating and coordinating political lobbying by way of media appearances and protest marches (Paragraph 35), conducting a study titled "Sweatshops on Wheels" (Paragraph 35), campaigning to impose their own vision of taxi operations in Los Angeles upon the riding public (Paragraph 41), and LATWA's appearing before the full City Council (Paragraph 65).

The complaint also alleges details regarding SAN's alleged violations of the California Revenue & Tax Code and IRC section 501 (Paragraph 50-59). The allegations focus on the lobbying as being a "substantial part" of SAN's activities, in violation of its classification as a charitable organization. Plaintiffs allege they are injured by defendants'

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financial advantage (Paragraph 77). The crux of their damages appear to be the costs associated with responding to defendants' lobbying efforts and increased overhead in responding to "an illegal advocacy operation." (Paragraphs 86, 87).

The prayer seeks the following relief: (2) a temporary restraining order, a preliminary injunction, enjoining defendants [from engaging in] "any propoganda, lobbying, political, advocacy grass roots or destabilizing campaign that in any way violates restrictions on non-profits and charities; (3) for a permanent injunction requiring defendants to disclose fully its lobbying, grassroots and political activities to the Internal Revenue Service and to the Franchise Tax Board, and (4) for a declaration that defendants' ongoing propoganda, lobbying, political advocacy grass roots and destabilizing campaign violates law applicable to non-profits constitutes an unlawful business practice. See comp., p.30.

The allegations regarding defendants' political activity and their tax status are intertwined. See Scott v. Metabolife Int'l, Inc. (2004) 115 Cal.App.4th 404. The focus is not on the form of the cause of action, but rather on the defendants' actions which which gave rise to the alleged liability and whether those actions are speech or petition-based. City of Cotai v. Cashman (2002) 29 Cal.4th 69, 79-80. Reading the complaint as a whole and in particular, the prayer for relief, the Court finds that the gravamen of the

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pleading is the alleged prohibited political activity, and not defendants' improper tax status. Those activities, as described above, are protected by defendants' right to petition and free speech and fit within the purview of section 425.16, subsection (e). DuPont Merck Pharmaceutical Co. v. Superior Court (2000) 78 Cal.App.4th 562 (lobbying efforts as part of an official proceeding); Damon v. Ocean Hills Journalism Club (2000) 85 Cal.App.4th 468 (disseminated newsletters and statements made in a public forum on an issue of public interest); ComputerXPress, Inc. v. Jackson (2001) 93 Cal.App.4th 993 (websites are public forums).

The burden then shifts to plaintiffs to demonstrate a probability of prevailing on the claim. C.C.P. Section 425.16(b)(1). Plaintiff must demonstrate that the complaint is both legally sufficient and supported by a prima facie showing of facts to sustain a favorable judgment. Taus v. Loftus (2007) 40 Cal.App.4th 683. Plaintiffs have not met that burden.

The basis for plaintiffs' claim that defendants' activities are unlawful relates to SAN's status as a charitable organization under IRC section 501. There is no private right of action for the enforcement of section 501. Ferguson v. Cnetura Health Corp. (2004) 358 F.Supp.2d 1014. The claim fails on that basis. Even if the challenge was proper, this Court has no jurisdiction to review a tax classification made by the federal government. see Ohio County & Independent

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Agriculture Soc. v. Commissioner (6th Cir.1979) 610 F.2d 448; I.R.C. Section 7428. To the extent there may be concurrent jurisdiction, as argued by plaintiffs, this Court declines to exercise jurisdiction on a federal tax matter.

A cause of action for violation requires that a plaintiff "has suffered injury in fact and has lost money or property as a result of such unfair competition." Cal.Bus. & Prof. Code Section 17204; see also Buckland v. Threshold Enterprises, Ltd., 155 Cal. App.4th 798, 814; Walker v. USAA Casualty Ins. Co. (E.D. Cal. 2007) 474 F.Supp.2d. 1168, 1172 (to have standing to assert a UCL claim, plaintiff must show either prior possession or a vested legal interest in the money or property allegedly lost). Plaintiffs have not demonstrated the loss of any interest in which they were vested. See Sanchez v. Wal-Mart Stores, Inc. 2008 U.S. Dist. LEXIS 70468. Plaintiffs allege defendants' conduct "increased the costs of operating plaintiffs' businesses" and "forced" plaintiffs to respond to lobbying efforts. Comp., Paragraph 86. They did not meet their burden of establishing actual injury as a result of defendants' conduct. Southern Calif. Housing Rights Center v. Association (2006) 426 F.Supp.2d 1061. They do not explain how the allegedly false returns caused them to spend money opposing defendants' advocacy efforts. Therefore, plaintiffs failed to meet the standing requirement to bring a 17200 claim.

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For the reasons set forth above, the motion to strike is granted. Defendants, as the prevailing party, are entitled to reasonable attorney's fees incurred in bringing and defending the subject motion. C.C.P. Section 425.16(c). They were not sought as part of the motion, so such award is not a part of this order.

- Evidentiary Objections
- Declaration of Hamid Khan
 - . Paragraph 4 OVERRULED
 - . Paragraph 6 OVERRULED
 - . Paragraph 11 SUSTAINED
- Declaration of Sentayehu Silasse
 - . Paragraph 3 OVERRULED
 - . Paragraph 5 OVERRULED
- Declaration of Nettare Ahmed
 - . Paragraph 2 SUSTAINED
- Declaration of Michael Calin
 - . Paragraph 2, Ins. 10-16 SUSTAINED
 - . Paragraph 2, Ins. 22-27 SUSTAINED
- Declaration of Edik Elyasi
 - . Paragraph 2, Ins. 11-17 SUSTAINED
- Declaration of William Rouse
 - . Paragraph 2, Ins. 12-19 SUSTAINED
 - . Paragraph 3, Ins. 1-6 OVERRULED
- Declaration of Martin Shatakyan
 - . Paragraph 2, Ins. 11-17 SUSTAINED
- Declaration of Eugene Smolyar
 - . Paragraph 2, Ins. 11-17 SUSTAINED

II. Plaintiffs' motion for a continuance is DENIED.

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C.C.P. Section 425.16(g).

Plaintiffs have not established good cause to continue the motion. See Lafayette Morehouse, Inc. v. Chronicle Publishing co. (1995) 37 Cal.App.4th 855, 868. While there may exist evidence not in plaintiffs' possession, their claim for violation of Business and Professions Code section 17200 et seq. fails as a matter of law. Additional evidence would not change the Court's ruling on the motion to strike.

Copy of this minute order faxed to counsel this date as follows:

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