Superior Court of California
County of Los Angeles

JAMES WOODS,

Plaintiff,

vs.

JOHN DOE, ET AL.,

Defendants.

Case No.: BC589746

DEPARTMENT 45

[TENTATIVE] ORDER

Complaint Filed: 7/29/15
Trial Date: None set

Hearing date: October 23, 2015 and taken under submission
Moving Party: Plaintiff James Woods
Responding Party: Defendant John Doe aka "Abe List"

Motion for Leave to Conduct Discovery Re John Doe's Special Motion to Strike

The Court considered the moving papers, opposition, reply, and extensive oral argument.

The motion is DENIED.

Plaintiff James Woods requests an order pursuant to CCP section 425.16(g) permitting him leave to conduct specified discovery to oppose defendant's special motion to strike, which is set to be heard on 2/2/16, and to obtain identifying information for Doe No. 2 so as to affect service on that defendant.

Plaintiff filed a complaint against John Doe aka "Abe List" and Does 2 through 10 for (1) defamation and (2) invasion of privacy by false light. Plaintiff alleges that his claims arise out of and are for damages with respect to a false and defamatory statement which was initially published on or about 7/15/15 by an unidentified anonymous person who created and who operates a Twitter account under the name "Abe List." ("AL") [Twitter is a social media

platform on which users send "tweets"—statements of up to 140 characters—visible to other users who "follow" them.] The owner of this Twitter account has thousands of followers and, since at least December 2014, has undertaken to engage his followers with a campaign of childish name-calling targeted against Woods. In the past, AL has referred to Woods with such derogatory terms as "prick," "joke,""ridiculous,""scum" and "clown-boy." Complaint, 8. On 7/15/15, and for the sole and intentional purpose of harming Woods, AL concocted and posted on his Twitter account the outrageous, baseless, false and defamatory statement "cocaine addict James Woods still sniffing and spouting." In doing so, AL intended to, and did, convey to thousands of AL's followers and others with access to the internet the false claim that Woods is addicted to cocaine, a controlled substance. Id., 9. An unidentified person operates and utilizes the AL Twitter Account which is displayed at or with the uniform resource locator ("URL") <https://mobile.twitter.com/abelisted?p=s>, and which is continually maintained and is included in and appears prominently in current Google.com and other search engine results. Indeed, a search on Google.com for "Abe List James Woods" yields the outrageous statements from the AL Twitter Account as the top two results, including one that calls Woods "a ridiculous scum clown-boy." Id., 10. AL published, and/or caused to be published or authorized to be published, the false statement on the AL Twitter Account and in current (as of the date of this Complaint) Google.com search engine results, causing the false statement to be viewed thousands of times and possibly even hundreds of thousands of times. AL posted the false statement in response to a Twitter post by Woods. Thus, the false statement has been seen not only by defendants' thousands of followers, but possibly by Woods' 238,512 followers on his Twitter account. Id., 11.

On 9/2/15, John Doe filed a special motion to strike, arguing that Twitter is a social media platform known for hyperbole and insult; plaintiff is known for hyberbole and insult on Twitter; John Doe aka "Abe List" is known for blunt rhetoric and for insulting political figures;

and plaintiff sent a political tweet and John Doe insulted him in response. John Does argues that his tweet was hyperbole and insult, and not a statement of provable fact.

Plaintiff seeks leave to conduct limited discovery targeted to (1) the issue of "actual malice" as it relates to defamatory statements made by Abe List; (2) the identities of Abe List and Doe No. 2 aka T.G. Emerson; and (3) to the extent the Court deems relevant, Abe List's claims that he is "known for blunt rhetoric and for insulting political figures." The type of discovery sought includes (1) document requests to Doe Defendants and third party subpoenas on Twitter (and any relevant Internet Service Provider) relating to the identification of the Doe Defendants, their "tweet" histories and any communications they had about plaintiff; and (2) the deposition of Abe List to further establish the existence of "actual malice" and to "debunk" his claim that Wood's Twitter followers should have known he was speaking hyperbolically.

As a general rule, once a SLAPP motion is filed all discovery proceedings in the action are stayed until the trial court rules on the motion. The trial court, however, may lift the discovery stay "for good cause shown." Section 425.16(g) provides that "on noticed motion and for good cause shown," the court may permit a plaintiff to seek limited discovery necessary to oppose a special motion to strike. See Lafayette Morehouse, Inc. v. Chronicle Publishing Co. (1995) 37 Cal. App. 4th 855, 867. To satisfy the "good cause" standard, a plaintiff must demonstrate that a defendant or third party possesses specific, relevant evidence necessary to oppose a special motion to strike. See, e.g., Schroeder v. Irvine City Council (2002) 97 Cal. App. 4th 174, 191 ("good cause" requires that plaintiff demonstrate evidence needed to support his claims which is neither "readily available from other sources" nor "irrelevant as a matter of substantive law."). See also Paul v. Friedman (2002) 95 Cal. App. 4th 853, 860 n.8 (plaintiff

failed to show good cause because plaintiff did not identify specific discovery needed to support plaintiff's claims).

In an opposition to an anti-SLAPP motion, plaintiff bears the burden of establishing a probability of prevailing and ""must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited."" Navellier v. Sletten (2002) 29 Cal. 4th 82, 88-89. The tort of defamation involves (a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage." Taus v. Loftus (2007) 40 Cal. 4th 683, 720. "If the person defamed is a public figure, he cannot recover unless he proves, by clear and convincing evidence, that the libelous statement was made with '"actual malice" — that is, with knowledge that it was false or with reckless disregard of whether it was false or not.'" Reader's Digest Assn. v. Superior Court (1984) 37 Cal.3d 244. "Libel is defined by Civil Code section 45 as 'a false and unprivileged publication by writing, . . . which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.' . . . In determining whether a statement is libelous we look to what is explicitly stated as well as what insinuation and implication can be reasonably drawn from the communication." Forsher v. Bugliosi (1980) 26 Cal.3d 792, 802-803.

"In opposing an anti-SLAPP motion, a defamation plaintiff need not establish malice by clear and convincing evidence, the standard applicable at trial. Rather, the plaintiff must meet her minimal burden by introducing sufficient facts to establish a prima facie case of actual malice; in other words, she must establish a reasonable probability that she can produce clear and convincing evidence showing that the statements were made with actual malice." Young v. CBS Broadcasting, Inc. (2012) 212 Cal. App. 4th 551, 563. "[A]ctual malice can be proved by circumstantial evidence. '[E]vidence of negligence, of motive and of intent may be adduced for

the purpose of establishing, by cumulation and by appropriate inferences, the fact of a defendant's recklessness or of his knowledge of falsity.' A failure to investigate, anger and hostility toward the plaintiff, reliance upon sources known to be unreliable, or known to be biased against the plaintiff — such factors may, in an appropriate case, indicate that the publisher himself had serious doubts regarding the truth of his publication." Reader's Digest, supra, at 257-58.

In The Garment Workers Center v. Superior Court (2004) 117 Cal. App. 4th 1156, the court found that it was an abuse of discretion of trial court permitting a retailer to depose two employees of a non-profit on the issue of malice before the trial court first determined whether plaintiff had a reasonable probability of establishing the other elements of a libel action. The court stated,

> The court should also consider the plaintiff's need for discovery in the context of the issues raised in the SLAPP motion. If, for example, the defendant contends the plaintiff cannot establish a probability of success on the merits because its complaint is legally deficient, no amount of discovery will cure that defect. In a libel case, unless it appears on the face of the complaint the plaintiff will be required to establish actual malice, or the defendant makes such a contention in its SLAPP motion, there is no need for the plaintiff to engage in discovery on that issue in order to show a reasonable probability of success on the merits. Even if it looks as if the defendant's actual malice may be an issue in the case, if it appears from the SLAPP motion there are significant issues as to falsity or publication—issues which the plaintiff should be able to establish without discovery—the court should consider resolving those issues before permitting what may otherwise turn out to be unnecessary, expensive and burdensome discovery proceedings.

Id. at 1162.

Plaintiff contends he has good cause because the information sought by plaintiff is in the exclusive control of the Doe Defendants and third parties, and Abe List has changed his privacy settings on his Twitter account to block access to his "Tweet" history; the discovery will allow plaintiff to successfully oppose the anti-SLAPP motion and establish a prima facie case that Abe

List acted with actual malice in publishing the false and defamatory tweet about plaintiff; the discovery sought will permit plaintiff to obtain the identity of Doe No. 2, which is necessary to effectuate service on this defendant; and the discovery requested is narrowly tailored and is the least burdensome alternative to obtain the necessary information.

In opposition, defendant argues that his anti-SLAPP motion is "explicitly premised on one argument: that the tweet at issue in this case is an insulting indulgence in figurative rhetorical hyperbole and cannot be taken as a provable statement of fact." Thus, defendant contends, plaintiff will not be able to carry his burden of showing that the tweet is a statement of fact. The anti-SLAPP motion does not raise the issue of "malice" at all. The court does not even need to reach the truth or falsity of the statement, let alone whether its falsity was malicious—if the statement was not a provable statement of fact in the first place. See Paterno v. Superior Court (2008) 163 Cal. App. 4th 1342, 1356. Defendant argues that if the court finds that the statement is a "mere rhetorical insult," then malice is irrelevant and defendant prevails.

The court agrees that plaintiff is not entitled to discovery into malice at this stage. The anti-SLAPP motion is limited to whether the statement was a provable fact or a "figurative rhetorical insult."

As to discovery as to Abe List's claim that he is known for "posting blunt and abrasive tweets," plaintiff has not shown good cause.

As to discovery of defendant Abe List's identity, plaintiff has not met his burden of showing good cause. Defamation plaintiffs are not entitled to use legal process to pierce the anonymity of internet speakers unless they can make a prima facie case. Digital Music News LLC v. Superior Court (2014) 226 Cal. App. 4th 228, 245-46. See also Krinsky v. Doe 6 (2008) 159 Cal. App. 4th 1154, 1162 ("The use of a pseudonymous screen name offers a safe outlet for the user to experiment with novel ideas, express unorthodox political views, or criticize

corporate or individual behavior without fear of intimidation or reprisal. In addition, by concealing speakers' identities, the online forum allows individuals of any economic, political, or social status to be heard without suppression or other intervention by the media or more powerful figures in the field."). At this stage, the identity of Abe List is irrelevant to any issue raised by the anti-SLAPP motion and not required for plaintiff to meet his prima facie case.

As to the identity of Doe 2, the motion is improper to obtain such information as plaintiff's request for such information is in the context of the anti-SLAPP statute and Doe 2 did not file an anti-SLAPP motion.

After extensive oral argument at the hearing, defendant conceded that in the context of the anti-SLAPP motion as to the second prong (plaintiff's burden) under the anti-SLAPP analysis, if the court finds that the statement at issue was a statement of fact, then as to the element of malice, it has been met. Thus, there is no need for limited discovery as to malice.

The motion is DENIED.

It is so ordered.

Dated: October 26, 2015

MEL RED RECANA
Judge of the Superior Court

C E R T I F I C A T E O F M A I L I N G

L.A. Superior Court Central

Civil Division

JAMES WOODS VS. JOHN DOE ET AL	BC589746

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