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In Brief

February 2012

ANTI-"SLAPP" LAW STRIKES ONLY AT SUITS FILED *SOLELY* TO SILENCE CITIZEN PARTICIPATION IN GOVERNMENT . . . *NOT BONA FIDE DEFAMATION CLAIMS BY PUBLIC OFFICIALS*

Interpreting the state's "anti-SLAPP" (Strategic Lawsuit Against Public Participation) statute enacted in 2007, the Illinois Supreme Court has opined that the law does not prevent public employees and officials from bringing potentially meritorious defamation lawsuits.

The Court's decision in *Sandholm v. Kuecker,* 2012 WL 169708 (January 20, 2012), reversed an appellate court ruling that the statute immunized any acts of a defendant in furtherance of his constitutional rights to petition and participate in government – even if those acts include speech which defames the plaintiff public official.

The Facts

Plaintiff Steve Sandholm was head basketball coach and athletic director at Dixon High School. In February 2008, the defendants initiated a campaign to have him removed as basketball coach and athletic director due to their disagreement with his coaching style. In pursuit of this goal, they created a website, e-mailed school board members, contacted newspaper reporters, appeared on a local radio station, and posted comments on various websites impugning plaintiff's reputation and asking the board of education to terminate his employment.

The defendants' numerous published statements asserted, among other things, that Sandholm badgered, bullied and humiliated his players; gave half-time speeches so "profanity-laced" that people "wanted to leave the locker room"; exhibited a lack of positive character traits; and blackmailed one defendant's son by threatening to give a bad scouting report to a college if he did not stop criticizing the coach to outsiders.

In April 2008, the board voted to remove Sandholm as basketball coach but retained him as the school's athletic director.

The Lawsuit

On April 25, 2008, Sandholm filed a state court action alleging multiple counts of defamation *per se*, false light invasion of privacy, civil conspiracy to intentionally interfere with prospective business advantage, and slander *per se* based on the defendants' campaign against him. The defendants moved to dismiss the complaint, arguing that it constituted a SLAPP (Strategic Lawsuit Against Public Participation) prohibited by the Citizen Participation Act, 735 ILCS 110/1 *et seq.* (the "Act"), commonly referred to as the anti-SLAPP statute.

The Act applies to "any motion to dispose of a claim in a judicial proceeding on the grounds that the claim is based on, relates to, or is in response to any act or acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government." It immunizes from liability "[a]cts in furtherance of the constitutional rights to petition, speech, association, and participation in government . . . , regardless of intent or purpose, except when not genuinely aimed at procuring favorable government action, result, or outcome."

The circuit court dismissed the entire complaint, finding that the Act immunized defendants from all of Sandholm's claims. The court also awarded defendants more than $54,000 for attorneys' fees they had incurred in obtaining dismissal of the lawsuit, as also allowed by the Act. The Illinois Appellate Court affirmed the dismissal and the fee award. The Supreme Court agreed to hear

Sandholm's appeal, granting leave to the State of Illinois to intervene on the side of defendants. The Court also allowed the ACLU, Illinois Press and Broadcasters Associations, and the Public Participation Project to submit an *amicus curiae* brief supporting the lower court decisions.

The Illinois Supreme Court's Opinion

The Illinois Supreme Court reversed the judgments of the lower courts and remanded the case for further proceedings.

The Court began by noting that SLAPPs are lawsuits aimed at preventing citizens from exercising their political rights or punishing those who have done so, by using the threat of money damages or the costs of defending against litigation, in an effort to stifle citizen participation.

The Court described the "paradigm SLAPP suit" as one filed by developers, unhappy with public protest over a proposed development, filed against leading critics for the purpose of silencing criticism of the project. Such lawsuits "are, by definition, meritless", in that plaintiffs in SLAPP suits "do not intend to win but rather to chill a defendant's speech or protest activity and discourage opposition by others through delay, expense and distraction."

To deter such abusive tactics, Illinois and many other states have adopted anti-SLAPP legislation to provide for expedited judicial review, summary dismissal, and recovery of attorney's fees by a party who has been "SLAPPed."

The Court construed Illinois' anti-SLAPP statute as intended to apply only to actions based *solely* on the defendants' petitioning activities, and not to provide blanket immunity or create a new privilege for defamation. In other words, the Act does not limit the right to bring a lawsuit with the genuine purpose of recovering damages for alleged defamation. Rather, it exists to prevent meritless, retaliatory claims from proceeding, and to provide monetary relief for citizens who have been targeted by SLAPP plaintiffs for exercising their constitutional rights to petition, speech, freedom of association, and participation in government.

Applying this interpretation, the Court concluded that on its face, Sandholm's lawsuit was not meritless and should not have been dismissed: it was not solely based on, related to, or in response to the acts of the defendants in furtherance of their rights of petition and speech. The true goal of the plaintiff's lawsuit was to seek damages for the personal harm to his reputation from the defendants' alleged defamatory acts. The Court concluded that Sandholm's lawsuit was not subject to dismissal under the Act.

Significance of the Court's Decision

Under *Sandholm v. Kuecker*, public employees and officials may sue citizens who attack their character and ability to perform their official duties for defamation and related torts, if the true purpose of their lawsuits is to recover for damage to their reputations. Illinois' anti-SLAPP statute applies only to actions which are based *solely* on the defendant's petitioning activities. It does not provide blanket immunity or create a new privilege for defamation. As a result, public employees and officials may bring *bona fide* defamation lawsuits seeking money damages, without fear that their claims may be subject to expedited dismissal and may potentially render them liable for the legal fees of the party who engaged in the alleged defamatory conduct.

If you have questions about this decision or the anti-SLAPP statute, please contact Ken Florey or Heidi Katz in the firm's Chicago office.

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