

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 74

BC723908

**THOMAS EMENS VS CALIFORNIA CATHOLIC
CONFERENCE ET AL**

April 17, 2019

1:30 PM

Judge: Honorable Michelle Williams Court
Judicial Assistant: C. Guerrero
Courtroom Assistant: R. Cruz

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

The Court, having taken the matter under submission on 03/18/2019, now rules as follows:

Defendants The California Catholic Conference, Inc. and The Roman Catholic Archbishop of Los Angeles' Special Motion to Strike Complaint (joined by The Roman Catholic Bishop of San Diego, The Roman Catholic Bishop of Fresno, The Roman Catholic Bishop of Oakland, The Roman Catholic Bishop of San Bernardino, The Roman Catholic Bishop of Santa Rosa, The Roman Catholic Archbishop of San Francisco, The Roman Catholic Bishop of San Jose, The Roman Catholic Bishop of Monterey, The Roman Catholic Bishop of Orange, The Roman Catholic Bishop of Sacramento).

The motion is granted as to the allegations within the scope of Code of Civil Procedure §425.16. Paragraphs 65 and 69, sections (1), (3), (5), (6) and (8) and Paragraph 80 sections (1), (3), (5), (6) and (9) are stricken. Defendants shall file and serve answers to the complaint by May 10, 2019. The Court sets a Case Management Conference for May 30, 2019 at 8:30 a.m. in Department 74.

DISCUSSION

Defendants bring a special motion to strike the complaint on the grounds that it arises from acts in furtherance of their rights of free speech in connection with a public issue and plaintiff has no likelihood of prevailing.

Requests for Joinder

The requests for joinders are granted.

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General Principles

A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. (Code Civ. Proc., § 425.16(b)(1).) A cause of action arising from means simply that the defendant's act underlying the plaintiff's cause of action must itself have been an act in furtherance of the right of petition or free speech. (*City of Cotati v. Cashman* (2002) 29 Cal. 4th 69, 78.) Acts in furtherance include: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest. (Code Civ. Proc., § 425.16(e).)

In bringing an anti-SLAPP motion, the defendant bears the initial burden to show that the claims in plaintiff's complaint are covered by the statute. (*Roberts v. Los Angeles County Bar Assn.* (2003) 105 Cal. App. 4th 603, 613.)

“[T]he act which forms the basis for the plaintiff's cause of action' must itself have been an act in furtherance of the right of petition or free speech.” (*Kolar v. Donahue, McIntosh & Hammerton* (2006) 145 Cal.App.4th 1532, 1538; *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76 78; *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1003.) In other words, the anti SLAPP statute is inapplicable as to protected conduct that merely evidences claims, but is not itself the basis for them. (*Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal. App. 4th 658, 673.)

The Claims Alleged in the Complaint are Within the Scope of the Statute

“Public interest” under the SLAPP statute is broadly construed to include private matters that impact a broad segment of society, or affect a community in a manner like a governmental entity, especially where a powerful organization may impact many individuals. (*Country Side Villas Homeowners Assn. v. Ivie* (2011) 193 Cal.App.4th 1110, 1117.) A public interest involves more

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than mere curiosity, a broad and amorphous interest, or private information communicated it to a large number of people, and instead concerns a substantial number of people, some closeness between the statements and the public interest, and a focus upon the communications as being the interest and not upon a private controversy. (McGarry v. Univ. Of San Diego (2007) 154 Cal.App.4th 97, 110.)

Matters concerning priests abusing children and the Church's handling of the victims and abusers are matters of public interest.

The causes of action each allege the same conduct by defendants. The relevant paragraphs allege:

“65. Each and every Defendant entered into a civil conspiracy and concerted action to pursue the common purpose of 1) concealing the sexual assaults of, the identities and patterns of its agents; 2) concealing sexual assaults and abuse committed by its agents from proper civil authorities; 3) attacking credibility of victims of Defendants' agents; 4) protecting Defendants' agents from criminal prosecution for sexual assaults and abuse against children; 5) allowing known child molesters to live freely in the community without informing the public; 6) after receiving reports or notice of misconduct by clerics transferring them to new locations without warning parishioners or the public of the threat posed by such sexual abusers; 7) making affirmative representations regarding Defendants' agents' fitness for employment in positions that include working with children, while failing to disclose negative information regarding sexual misconduct by clerics; and 8) concealing Defendants' actions and their agents' actions from survivors of past abuse causing separate current harm.”

“69. Defendants continue to conspire and engage and/or have conspired and engaged in efforts to: 1) conceal from the general public the sexual assaults committed by, the identities of, and the pedophilic/ephebophilic tendencies of its accused priests; and/or 2) conceal from proper civil authorities sexual assaults and abuse committed its agents against minor children; and/or 3) attack the credibility of victims of Defendants' agents; and/or 4) protect Defendants' agents from criminal prosecution for their sexual assaults and abuse against children; and/or 5) allow known child molesters to live freely in the community without informing the public; and/or 6) after receiving reports or notice of misconduct by clerics, transfer them to new parishes without any warning to parishioners of the threat posed by such clerics, in violation of law; 7) make affirmative representations regarding Defendants' pedophilic and/or ephebophilic agents' fitness for employment, in positions that include working with children, while failing to disclose negative information regarding sexual misconduct by such clerics; and/or 8) concealing

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Defendants' actions and their agents' actions from survivors of past abuse causing separate current harm."

"80. Defendants continue to conspire and engage and/or have conspired and engaged in efforts to: 1) conceal from the general public the sexual assaults committed by, the identities of, and the pedophilic/ephebophilic tendencies of accused priests; and/or 2) conceal from proper civil authorities sexual assaults and abuse committed by Defendants' agents against minor children; and/or 3) attack the credibility of victims of Defendants' agents; and/or 4) protect Defendants' agents from criminal prosecution for their sexual assaults and abuse against children; and/or 5) allow known child molesters to live freely in the community without informing the public; and/or 6) after receiving reports or notice of misconduct by clerics, transfer them to new parishes without any warning to parishioners of the threat posed by such clerics, in violation of law; 8) make affirmative representations regarding Defendants' pedophilic and/or ephebophilic agents' fitness employment, in positions that include working with children, while failing to disclose negative information regarding sexual misconduct by such clerics; and/or 9) concealing Defendants' actions and their agents' actions from survivors of past abuse causing separate current harm."

The allegations of the complaint are broad. The complaint alleges disclosures/non-disclosures have been made regarding incidents from the present to the 1950's. It addresses non-disclosures of the identities of priests against whom allegations have been made, regardless of the credibility of the allegation.

Some of the conduct alleged does implicate the right of free speech, including the right not to speak. This would include the right not to publicly disclose the names of priests against whom allegations were made which were determined to be unfounded or lack credibility, and disclosing the names of priests against who allegations were made of conduct in the 1950's where there was no investigation and where the priests have passed away.

The allegation that defendants attacked the credibility of victims does implicate free speech. Defendants may address the credibility of those making accusations against priests.

Allowing child molesters to live in the community without notice to the community and transferring alleged molesters to new parishes without warning of the general public has First Amendment free speech implications. The actions are not permitting molesters to live in the community and transferring accused molesters, but doing this without notice to the affected communities. There are no allegations that the priests at issue had been convicted of any crime,

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or that notice was mandated. This would include accusations made against priests which were determined to lack credibility and to be without merit.

Concealing information regarding the actions of defendants and their agents from victims of past abuse also implicates free speech, as it is a general allegations as to all information regarding any reports of abuse, whether that information is connected to the abuse of a particular victim or there was any relation between the time of the abuse and the time of the information, and without regard to the credibility of the information.

The remaining allegations do not involve the right to free speech or petition. There is no right to conceal sexual assaults from authorities. Protecting abusers from criminal prosecution is neither free speech nor petition. Making affirmative representations of the fitness of priests for assignments which included working with children while concealing information regarding the sexual misconduct of those priests is not an issue of free speech, but an issue of false speech.

When relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at this stage. If the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached. There, the burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated. The court, without resolving evidentiary conflicts, must determine whether the plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment. If not, the claim is stricken. Allegations of protected activity supporting the stricken claim are eliminated from the complaint, unless they also support a distinct claim on which the plaintiff has shown a probability of prevailing." (Baral v. Scnitt (2016) 1 Cal.5th 376, 396.)

Plaintiff Has Not Established a Probability of Prevailing on the Merits

To establish a probability of prevailing on the merits, 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; Navellier v. Sletten (2002) 29 Cal.4th 82, 88.) For purposes of ruling on anti-SLAPP motions, courts must accept complainants' admissible evidence as being true, cannot consider credibility or weigh evidence, and evaluate defense evidence only to determine if it conclusively has defeated plaintiff's proof as a matter of law. (Ross v. Kish (2006) 145 Cal.App.4th 188, 197; Flatley v. Mauro (2006) 39 Cal.4th 299, 326; Kashian v. Harriman (2002) 98 Cal.App.4th 892, 906.)

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Plaintiff submits his declaration that he first reported the sexual assaults he suffered in 1978-1980 to the Archdioceses of Los Angeles in 2016, and that he had feelings of anxiety, guilt and anger over his belief that defendants are still concealing names of priests alleged to have committed sexual assaults on children and minors. He submits the declaration of Father Thomas P. Doyle, a Canon lawyer who worked on the abuse cases, and discusses lobbying efforts by Catholic Conferences regarding legislation and proposed statutes address the abuse issue. He also submits declarations, letters and newspaper articles, and lists of priests accused of child molestation from various defendants released after this action was filed.

Defendants argue conspiracy is not a viable cause of action in this motion. This is not correct. *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 631, and *ComputerXpress, Inc. v. Jackson* 92001) 93 Cal.App.4th 993, 1015. State the general proposition that civil conspiracy is not an independent cause of action, but requires an underlying tort. The complaint alleges two causes of action in nuisance, committed individually by defendants, and that those actions were part of an agreement among the defendants on how to handle the sexual abuse by clergy issue.

The Doyle declaration does not establish the probability of prevailing on the merits. It relates only generally to lobbying efforts, which are not part of the allegations in this case.

Plaintiff's declaration does reflect his emotional distress that it took time for the Archdiocese of Los Angeles to list Mohan after he reported the abuse, and that Mohan was initially incorrectly identified and that the Diocese of Orange has not yet listed Mohan.

Plaintiff has not established a probability of prevailing on his cause of action for private nuisance.

“Unlike public nuisance, which is an interference with the rights of the community at large, private nuisance is a civil wrong based on disturbance of rights in land. (*Venuto v. Owens-Corning Fiberglas Corp.*, supra, 22 Cal.App.3d at p. 124.) A nuisance may be both public and private, but to proceed on a private nuisance theory the plaintiff must prove an injury specifically referable to the use and enjoyment of his or her land. The injury, however, need not be different in kind from that suffered by the general public.” (*Koll-Irvine Property Owners Assn. v. County of Orange* (1994) 24 Cal.App.4th 1036, 1041.)

There are no allegations that plaintiff has suffered any injury related to the use and enjoyment of his land.

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Public nuisance requires that defendant, by acting, or failing to act, created a condition that was harmful to health; or obstructed the free use of the property so as to interfere with the comfortable enjoyment of life or property; the condition affected a substantial number of people at the same time; an ordinary person would be reasonably annoyed or disturbed by the condition; the seriousness of the harm outweighs the social utility of the conduct; plaintiff did not consent to the conduct; plaintiff suffered harm that was different from the type of harm suffered by the general public; and defendant's conduct was a substantial factor in causing plaintiff's harm. (*Birke v. Oakwood Worldwide* (2009) 169 Cal. App. 4th 1540, 1548.) The different harm to the plaintiff must be different in kind, not merely different in degree. (*Koll-Irvine*, supra, at p. 1140.)

Plaintiff has alleged his harm to be his emotional distress, including guilt, worry, anxiety, and betrayal. Plaintiff has not shown this is different from the distress felt by other victims of Catholic clergy abuse, by parents who let their children interact with priests without supervision, or from Catholics in general.

As plaintiff has not established a probability of prevailing on the merits in his causes of action for private nuisance and public nuisance, his civil conspiracy cause of action also fails.

The moving party is directed to give notice.

Certificate of Mailing is attached.