IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

SCOTT M. BOYD, Plaintiff, v. PAULA K. CRUMPLER, MERLE TAYLOR, CAROLYN TAYLOR, PATRICIA A. BROWN, LYNN R. MEYER, ILLINOIS CAPITOL KENNEL CLUB, INC., an Illinois corporation, CHAMPAIGN ILLINOIS KENNEL CLUB, INC., PRAIRIELAND CLASSIC DOG SHOWS, an unincorporated association, and THE AMERICAN KENNEL CLUB, a New York corporation, Defendants.	Case No. 2020-L-000201 The Hon. Adam Giganti

Order on Pending Motions

This matter coming before the court on 4 May 2021 for oral argument by video remote court appearance on the separate motions filed herein, and the following case participants appearing remotely: counsel for the Plaintiff Attorney John M. Nelson; counsel for the Defendants American Kennel Club, and Lynn R, Meyer, Attorney Brendan J. Healey of Barron, Harris, Healey; counsel for Defendants Illinois Capitol Kennel Club, Inc., Attorney John G. Lamb of O'Hagan Meyer, LLC; and counsel for Defendants Champaign Illinois Kennel Club, Inc., Merle Taylor, Carolyn Taylor, and Patricia A. Brown, Katelyn Hodgman of Lawrence Kamin, LLC, and the following motions and memoranda having been read, heard, and considered by the court:

1) The motion filed pursuant to 735 ILCS 5/2-619.1 contained in the combined motion to dismiss and memorandum in support thereof, consisting of a motion to dismiss brought pursuant to 735 ILCS 5/2-615 and to 735 ILCS 5/2-619, by and on behalf of Defendants Champaign Illinois Kennel Club, Inc., Merle Taylor, Carolyn Taylor, and Patricia A. Brown;

2) The motion filed pursuant to 735 ILCS 5/2-615 and filed pursuant to 735 ILCS 5/2-606 contained in the combined motion to dismiss and memorandum in support thereof, brought by and on behalf of Defendants Illinois Capitol Kennel Cub, Inc.;

3) The motion to dismiss pursuant to 735 ILCS 5/2-615 and memorandum in support thereof and the supplemental memorandum to dismiss by the application of New York anti-SLAPP law therein in its conclusion denominated as a motion pursuant to 735 ILCS 5/2-619(a) (9) filed by and on behalf of Defendants American Kennel Club, and Lynn R, Meyer;

4) The motion to dismiss separately stated in the initial memorandum and Reply memorandum of the Defendants American Kennel Club, and Lynn R, Meyer pursuant to the application of the New York anti-SLAPP statute;

5) The Objections by the Plaintiff to evidentiary materials and statements contained in the motion to dismiss filed pursuant to 735 ILCS 5/2-619.1 by and on behalf of Defendants Champaign Illinois Kennel Club, Inc., Merle Taylor, Carolyn Taylor, and Patricia A. Brown and motion to strike or dismiss said evidentiary materials, statements and motions;

6) The Objections by the Plaintiff to evidentiary materials and statements contained in the motion to dismiss filed pursuant to 735 ILCS 5/2-615 and filed pursuant to 735 ILCS 5/2-606 by and on behalf of Defendants Illinois Capitol Kennel Club, Inc. and motion to strike or dismiss said evidentiary materials, statements and motions;

7) The Objections by the Plaintiff to evidentiary materials and statements contained in the motion to dismiss filed pursuant to 735 ILCS 5/2-615 by and on behalf of Defendants American Kennel Club, and Lynn R, Meyer and motion to strike or dismiss said evidentiary materials, statements and motions;

8) The memorandum filed by the Plaintiff in response to the motions to dismiss brought pursuant to 735 ILCS 5/2-615 and to 735 ILCS 5/2-619, by and on behalf of Defendants Champaign Illinois Kennel Club, Inc., Merle Taylor, Carolyn Taylor, and Patricia A. Brown;

9) The memorandum filed by the Plaintiff in response to the motions to dismiss brought pursuant to 735 ILCS 5/2-615 and to 735 ILCS 5/2-606, by and on behalf of Defendants Illinois Capitol Kennel Club, Inc.;

10) The memorandum filed by Plaintiff in response to the motion to dismiss brought pursuant to 735 ILCS 5/2-615 by and on behalf of Defendants American Kennel Club, and Lynn R, Meyer;

11) The memorandum filed by Plaintiff in response to the motion to dismiss brought by and on behalf of Defendants American Kennel Club, and Lynn R, Meyer pursuant to the application of the New York anti-SLAPP statute;

12) The affidavit filed by the Plaintiff;

13) The Replies filed by each of the Defendants appearing herein to the respective Responses filed by and on behalf of the Plaintiff;

14) The motion filed by and on behalf of the Plaintiff to file rebuttals and objections to evidentiary materials and statements contained in the separate Replies of the Defendants appearing herein;

15) The Objections by the Plaintiff to evidentiary materials and statements contained in the Reply filed by and on behalf of Defendants Champaign Illinois Kennel Club, Inc., Merle Taylor, Carolyn Taylor, and Patricia A. Brown, and motion to strike or dismiss said evidentiary materials and statements;

16) The Objections by the Plaintiff to evidentiary materials and statements contained in the Reply filed by and on behalf of Defendants Illinois Capitol Kennel Club, Inc., and motion to strike or dismiss said evidentiary materials and statements;

17) The Objections by the Plaintiff to evidentiary materials and statements contained in the Reply filed by and on behalf of Defendants American Kennel Club, and Lynn R, Meyer and motion to strike or dismiss said evidentiary materials and statements;

18) The additional Objections by the Plaintiff to evidentiary materials and statements contained in the Reply of Defendants American Kennel Club, and Lynn R, Meyer regarding the application of the New York anti-SLAPP statute;

19) The separate Rebuttals filed by the Plaintiff to the Replies of Defendants Champaign Illinois Kennel Club, Inc., Merle Taylor, Carolyn Taylor, and Patricia A. Brown, Defendants Illinois Capitol Kennel Club, Inc., and Defendants American Kennel Club, and Lynn R, Meyer.

20) The Objections and motions to strike or dismiss filed by Plaintiff as to evidentiary materials and statements contained in the separate motions to dismiss and memoranda filed by all

defendants appearing herein along with Plaintiff's separate Responses to said motions, and the Objections and motions to strike or dismiss filed by Plaintiff as to evidentiary materials and statements contained in the separate Replies filed by all defendants appearing herein along with his separate Rebuttals to said motions all having been previously been allowed to be filed and considered by the court; and upon the file, papers, and proceedings held herein, the court being fully advised in the premises and viewing the allegations thereof in the light most favorable to the Plaintiff, and all well pled facts as being taken as true;

THE COURT FINDS AS FOLLOWS:

The Court has jurisdiction over the Parties hereto and the subject matter herein.

Plaintiff is a dog owner. (Compl., Count III, ¶ 27.) In October of 2019 he and his dog traveled to Springfield for the Prairieland Classic Dog Shows. (*Id.*) The 2019 Prairieland Classic was held at the Illinois State Fair Exposition Center and featured dog shows held on consecutive days and sponsored by different local kennel clubs. (*Id.*, Background, ¶ 11.) The Champaign Illinois Kennel Club sponsored the October 17, 2019, dog show as part of the Prairieland Classic lineup. (*Id.*, Background, ¶ 15.)

Plaintiff arrived at the Exposition Center on October 16, the day before the first show. (*Id.*, Count III, ¶ 28.) As he looked for a spot to set up his equipment, Plaintiff interacted with Defendant Paula Crumpler. (*Id.*, Background, ¶ 33.) Ms. Crumpler was a dog show employee, generically characterized by Plaintiff as performing "security." (*Id.*, Count V, ¶ 45.) Plaintiff, however, alleged that Ms. Crumpler's duties were to "interact[] and direct[] dog show exhibitors," essentially assisting attendees at the dog show. (*Id.*, Count V, ¶ 52.) Plaintiff did not allege a specific "security" function Ms. Crumpler performed during any interaction with him. The next morning Ms. Crumpler submitted a written complaint to the dog show Event

Committee[1] regarding Plaintiff's actions. (*Id.*, Count I, ¶ 39.) In relevant part, Ms. Crumpler stated as follows:

> [Plaintiff] continued walking around trying to set up on the lower level. I told him again as he could see that no spaces were available and he would need to go upstairs. He turned around and charged at me and said, you think just because you're a woman you think you can talk to me like that. He was screaming in my face and telling me he had bulldogs and he couldn't go upstairs. He had also told me that when he came in. I thought the gentleman was going to hit me. He was very rude from the beginning when he came to the show. While the gentleman was shouting in my face his wife kept telling him repeatedly to stop.[2]

On the morning of October 17, 2019, the Champaign Illinois Kennel Club held an Event Committee Hearing and sustained the charges against Plaintiff. (*Id.*, Count I, ¶ 39.) The American Kennel Club ("AKC") upheld the findings of the Event Committee, set the penalties, and denied Plaintiff's request for reconsideration and his appeal. (*Id.*, Count III, ¶ 50, 51.) On October 6, 2020, Plaintiff filed a six-count Complaint against the moving Defendants as well as Paula Crumpler and Prairieland Classic Dog Shows.

I. Count I Defamation *Per Se* (Against AKC, CIKC, Merle Taylor, Carolyn Taylor, Patricia Brown)

Plaintiff bases his defamation *per se* claim on the following statement from the complaint Ms. Crumpler submitted in Mr. Boyd's disciplinary proceeding: "He was screaming in my face. . . . I thought the gentleman was going to hit me." (the "Crumpler Statement") Plaintiff also contends that Mr. Taylor defamed him when Mr. Taylor stated a "complaint" had been "filed" with the "Event Committee." (the "Taylor Statement") Plaintiff also alleges that Mr. Taylor said

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[1] The Event Committee comprised Defendants Merle Taylor, Carolyn Taylor, and Patricia Brown.
[2] Under 735 ILCS § 5/2-606 the full Crumpler complaint is relevant to the claims at issue and cognizable on a 2-615 motion. Defendants AKC and Ms. Meyer attached a copy the full Crumpler complaint as an exhibit to their 2-615 motion to dismiss, and Plaintiff does not dispute the truth or accuracy of the Crumpler complaint exhibit.

there was a "tape" and that there would be a "hearing." Defendants raise numerous defenses to the defamation *per se* claim.

A. Imputing Commission Of A Crime (Crumpler Statement)

A court can determine as a matter of law whether a statement is defamatory *per se* at the 2-615 motion to dismiss stage. Plaintiff contends that the Crumpler Statement is *defamatory per se* because it imputes that he has committed a crime (one of the categories of defamation *per se*). The Crumpler Statement does not rise to that level. To be actionable as defamation *per se* in the commission-of-a-crime category, a statement must directly or expressly accuse the plaintiff of committing a specific crime of moral turpitude. A broad, non-specific allegation like the Crumpler Statement does not meet this requirement. *See Kapotas v. Better Gov't Ass'n*, 2015 IL App (1st) 140534, ¶ 51; *Jacobson v. Gimbel*, 2013 IL App (2d) 120478 ¶ 27. Ms. Crumpler did not accuse Plaintiff of assault, and therefore the Crumpler Statement cannot be the basis for a defamation *per se* claim. *See Odicho v. Swedish Covenant Hosp.*, 2018 U.S. Dist. LEXIS 31203, at *13 (N.D. Ill. Feb. 27, 2018). Even if Ms. Crumpler were deemed to have accused Plaintiff of assault, that statement would not be actionable as defamation *per se* because assault is not a crime of moral turpitude. *See Garcia-Martinez v. Barr*, 921 F.3d 674, 676 (7th Cir. 2019).

B. Innocent Construction (Crumpler Statement)

Under the innocent construction rule, the court must adopt any reasonable construction of an allegedly defamatory statement. *See Chi. City Day Sch. v. Wade*, 297 Ill. App. 3d 465, 475 (1st Dist. 1998). The Crumpler Statement reflects an unpleasant situation and inappropriate conduct, but it does not portray criminal activity. *See Dobias v. Oak Park & River Forest Sch. Dist. 200*, 2016 IL App (1st) 152205 ¶¶ 99-100. The Crumpler Statement is therefore

reasonably capable of an innocent (i.e., not defamatory *per se*) construction and nonactionable on that basis.

C. Pure Opinion (Crumpler Statement)

The Crumpler Statement is also constitutionally protected "pure opinion" because it reflects Ms. Crumpler's speculation ("I thought the gentleman was going to hit me") based on disclosed facts (Plaintiff was "very rude" was "screaming in my face" and "charged at me"). *See Hadley v. Doe*, 2014 IL App (2d) 130489 ¶ 48. Here, Ms. Crumpler disclosed the underlying facts, gave her opinion and theory about these facts, and allowed the audience to draw its own conclusions about the information. Whether a statement is protected opinion is a question of law, and the Crumpler Statement is not actionable on this basis.

D. Privilege (Crumpler Statement and Taylor Statement)

Further, the statements are privileged as a matter of law and thus protected from any liability. Absolute privilege provides complete immunity for statements that otherwise would be actionable. The statements were made for the purposes of conducting the quasi-judicial proceedings. ("Event Hearing") The Event Hearing was a quasi-judicial proceeding in which all statements made therein are immune from liability. *See Bushell v. Caterpillar, Inc.*, 291 Ill. App. 3d 559, 561-562 (3d Dist. 1997). Notwithstanding protection under absolute privilege, the statements are also qualifiedly privilege and protected against liability as a matter of law. *See Kuwik v. Starmark Star Mktg. & Admin., Inc.*, 156 Ill. 2d 16, 18 (1993). The Court finds that the statements alleged in the Complaint are privileged.

E. Substantial Truth (Taylor Statement)

The defamation claim based on the so-called Taylor Statement suffers from many of the same infirmities as the claim based on the Crumpler Statement. Like the Crumpler Statement, the

Taylor Statement is not defamatory *per se* and is reasonably subject to an innocent construction. Moreover, the Taylor Statement is demonstrably true based on the allegations of the Complaint. Mr. Taylor is quoted as stating that a complaint had been filed against Plaintiff, and that was in fact the case. (Compl., Count I, ¶ 33.) Plaintiff does not quote Mr. Taylor as saying that Plaintiff assaulted Ms. Crumpler or even words to that effect. The statements Plaintiff quotes Mr. Taylor as making are true and non-actionable.

II. Count II False Light (Against AKC, CIKC, Merle Taylor, Patricia Brown)

A plaintiff pleading a false light claim must show that the statements at issue placed the plaintiff in a false light before the public, that the false light in which the plaintiff was placed would be highly offensive to a reasonable person, and that defendants acted with actual malice. *See Lovgren v. Citizens First Nat'l Bank*, 126 Ill. 2d 411, 419-23 (1989). Plaintiff did not meet any of those criteria. First, many of the statements Plaintiff identified in his false light claim are, based on a review of the Complaint, not false. In analyzing the alleged statements, the Court is mindful that it should not evaluate them from the perspective of the hypersensitive plaintiff. Accordingly, none of the statements Plaintiff identified are, as a matter of law, highly offensive to a reasonable person. Finally, Plaintiff was obligated to set forth in his Complaint factual allegations from which actual malice may reasonably be said to exist. Instead, he simply made a bare assertion of actual malice, which is inadequate.[3] *See Mittelman v. Witous*, 135 Ill. 2d 220, 238 (1989). For this and the other reasons set forth herein, Plaintiff's false light claim is dismissed with prejudice[4]

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[3] Plaintiff must also adequately plead actual malice to support his claim for punitive damages in Counts I and II. He did not do so.

[4] To the extent Plaintiff bases his false light claim on the Crumpler Statement or the Taylor Statement, the false light claim also will fail for the same reasons the defamation *per se* claim fails. *See Seith v. Chicago Sun-Times, Inc.*, 371 Ill. App. 3d 124, 139 (1st Dist. 2007).

III. Count III Promissory Estoppel Claim (Against AKC, CIKC, Merle Taylor, Carolyn Taylor, Patricia Brown, Lynn Meyer)

Plaintiff's promissory estoppel claim cannot survive because the Court finds there is an enforceable contract between the parties and that consideration exists. *See Salatech, LLC v. E. Balt, Inc.*, 2014 IL App (1st) 132639, ¶ 33. Plaintiff argues at length that he did not enter a contract in connection with his dog's participation in the dog shows. When read in its entirety, though, the Complaint shows there was an agreement that precludes the promissory estoppel claim. Plaintiff's promissory estoppel claim cannot go forward for other reasons as well. Plaintiff does not adequately allege either an unambiguous promise by any of the Defendants or that any reliance on his part would have been reasonable and foreseeable. The promissory estoppel count is the only claim against Ms. Meyer. Plaintiff, however, does not allege that Ms. Meyer made any promise to him, so a promissory estoppel claim cannot stand against her. Plaintiff also does not allege that any of the CIKC Defendants made any promise to him, so the promissory estoppel claim cannot stand against them either. The promissory estoppel claim is dismissed with prejudice.

IV. Rights Secured by Illinois Law (Against AKC, CIKC, Merle Taylor, Carolyn Taylor, Patricia Brown)

Plaintiff purports to bring a claim for "Rights Secured by Illinois Law," but there is no such claim in the State of Illinois. Plaintiff does not cite a single Illinois case in which such a claim was brought, let alone a successful claim. Plaintiff cites to several provisions of the Illinois statutes and administrative code that he contends form the basis for such a claim, but he does not demonstrate where any provide a private right of action. Court IV is not a claim recognized under Illinois law, and it is dismissed with prejudice.

V. Count V Negligent Hiring (Against AKC, CIKC, Merle Taylor, Carolyn Taylor, Patricia Brown, Illinois Capitol Kennel Club)

To allege the Defendants negligently hired Ms. Crumpler, Plaintiff must plead "'(1) that the employer knew or should have known that the employee had a particular unfitness for the position so as to create a danger of harm to third persons; (2) that such particular unfitness was known or should have been known at the time of the employee's hiring or retention; and (3) that this particular unfitness proximately caused the plaintiff's injury.'" *Doe v. Catholic Bishop of Chicago*, 2017 IL App (1st) 162388, ¶ 11; *quoting Van Horne v. Muller*, 185 Ill. 2d 299, 311 (1998). Further, "[u]nder a theory of negligent hiring or retention, the proximate cause of the plaintiff's injury is the employer's negligence in hiring or retaining the employee, rather than the employee's wrongful act." *Van Horne*, 185 Ill. 2d at 311; *see also Young v. Lemons*, 266 Ill. App. 3d 49, 52, (1994). Ultimately, "it is not enough for the plaintiff to simply allege that the employee was generally unfit for employment. 'There are many kinds of unfitness for employment that do not give rise to tort liability for negligent hiring [or retention].'" *Van Horne*, 185 Ill. 2d at 313; *quoting Fallon v. Indian Trail School, Addison Twp Sch. Dist. No. 4*, 148 Ill. App. 3d 931, 935 (1986). Instead, "[t]he particular unfitness of the employee must have rendered the plaintiff's injury foreseeable to a person of ordinary prudence in the employer's position." *Van Horne*, 185 Ill. 2d at 313.

Plaintiff does not allege any special employee knowledge or skill set required to merely "direct[] and interact[] with dog show exhibitors." (Compl., Count V, ¶ 52.) As such, the Plaintiff does not allege any specific relevant unfitness for the task Ms. Crumpler performed during her alleged proximity to Plaintiff on the evening of October 16, 2019. The Complaint merely states that, on the night when Crumpler's actual job duties involved interaction with

Plaintiff, Ms. Crumpler "engaged in erratic, menacing behavior." (*Id.* ¶ 46.) Plaintiff, however, does not allege a particular "unfitness" as the proximate cause of any alleged harm. Plaintiff's alleged injuries all stem from the purported complaint and Event Committee hearing that took place on the following day.

Additionally, Plaintiff does not allege facts demonstrating that Ms. Crumpler had actually performed any sort of "security" function during her interaction with Plaintiff, despite Plaintiff describing her as "security." Furthermore, to the extent the Complaint contains any factual allegations sufficient to marginally qualify Ms. Crumpler as security personnel under the Private Detective Statute, she was alleged to be an employee of the Defendants. She therefore would fall under the direct employee exemption of the Statute. Regardless of the depiction of Ms. Crumpler's security job status function, when applying the requisite proximate cause of injury analysis, Plaintiff fails to allege proximate cause between Crumpler's job function on the evening of October 16, 2019 and the injury alleged.

Plaintiff's Complaint fails to allege a specific job function requiring a special skillset in direct relation to the work actually performed by Ms. Crumpler at the time of her interaction with Plaintiff. Plaintiff therefore fails to allege sufficient facts to establish a particular unfitness for Ms. Crumpler to have merely interacted with and directed dog show participants. Plaintiff also does not allege facts sufficient to identify a particular unfitness causally related to Plaintiff's claimed injury. No fact alleged in the Complaint would render Plaintiff's alleged injury reasonably foreseeable and therefore sufficient to render Ms. Crumpler's hiring negligent. As a matter of law, the Complaint fails to state a cause of action for negligent hiring against any of the Defendants.

VI. Negligent Supervision Claim (Against AKC, CIKC, Merle Taylor, Carolyn Taylor, Patricia Brown, Illinois Capitol Kennel Club)

To allege Crumpler was negligently supervised, "the plaintiff must establish that (1) the employer had a duty to supervise its employee; (2) the employer negligently supervised its employee; and (3) such negligence proximately caused the plaintiff's injuries." *Lansing v. Sw. Airlines Co.*, 2012 IL App (1st) 101164, ¶ 22. Additionally, [t]he existence of a duty is a question of law for the court to decide. *Id.* Plaintiff alleges "injuries" in the context of defamation, purportedly stemming from the statements (oral and written) that occurred on October 17, 2019, but not from Ms. Crumpler's interactions with Plaintiff while in the performance of her job on October 16, 2019.

Because Plaintiff does not allege what job duties Ms. Crumpler negligently performed that were the proximate cause of his injuries, he also fails to allege what reasonable supervision any employer would need to perform regarding simple tasks of interaction and direction with registered participants. Plaintiff does not show how a "particular unfitness of the employee must have rendered the plaintiff's injury foreseeable to a person of ordinary prudence in the employer's position." *Van Horne*, 185 Ill. 2d at 313.

Plaintiff also failed to allege any Crumpler statements, comments or writings that were not made solely to her employer, and in the course of a privileged investigative hearing—as she was instructed to do in the performance of her job. Any statements Ms. Crumpler made are therefore qualifiedly privileged.

As a matter of law, Plaintiff fails to allege facts sufficient to state a cause of action for negligent supervision against any of the Defendants.

VII. American Kennel Club's New York anti-SLAPP Motion

Plaintiff has sued the American Kennel Club ("AKC") for, among other things, defamation. Plaintiff is a dog owner, and this dispute arises from disciplinary proceedings against him in connection with a dog show. (Compl., Count III, ¶ 27.) Plaintiff does not contend that the AKC itself made any of the statements at issue, but he seeks to hold the AKC liable for others' statements. Plaintiff alleges that the AKC is a corporation organized under the laws of the State of New York and that it maintains its principal office in New York. (*Id.*, Introduction, ¶ 10.) AKC moves to dismiss four of the six counts (Counts I, II, V, and VI) pursuant to § 2-619 and the New York anti-SLAPP statute.

SLAPP refers to a strategic lawsuit against public participation. SLAPPs typically involve defamation claims, and numerous states (including New York and Illinois) have passed anti-SLAPP laws. The various states' anti-SLAPP laws are not identical, though. As an initial matter, the Court must decide which state's anti-SLAPP law to apply.

The parties agree that Illinois follows the doctrine of dépeçage, which allows a court to apply a different choice-of-law analysis to individual issues in a case. Here, the parties agree that Illinois law applies to Plaintiff's substantive claims against the AKC, but they disagree regarding which state's law applies to AKC's anti-SLAPP defense. The choice of law for anti-SLAPP protection focuses on a state's interest in protecting the exercise of First Amendment rights by speakers domiciled in the state.

The domicile of the speaker is a crucial element in the choice of law analysis. Here, Plaintiff alleges that the AKC is incorporated in New York and maintains its principal office in New York. (*See* Compl. ¶ 10.) Plaintiff's allegations therefore establish that the AKC is

domiciled in New York. Accordingly, New York has the greatest interest in protecting the First Amendment rights of AKC, a New York citizen, and the New York anti-SLAPP law applies.

The New York anti-SLAPP law provides that a plaintiff must prove actual malice by clear and convincing evidence when the claim is based upon an action that involves public petition and participation. N.Y. Civ. Rights Law § 76-a(1)(a). Public petition and participation includes "lawful conduct in furtherance of the constitutional right of free speech in connection with an issue of public interest." *Id.* § 76-a(1)(a)(2). "'Public interest' shall be construed broadly, and shall mean any subject other than a purely private matter." *Id.* § 76-a(1)(d). The Court finds that the statements at issue meet the public interest standard. In addition, Plaintiff must "establish[] by clear and convincing evidence that any communication which gives rise to the action was made with knowledge of its falsity or with reckless disregard of whether it was false." *Id.* § 76-a(2). This means Plaintiff must plead (and ultimately prove) actual malice not only with regard to the false light claim (no party disputes that actual malice is an element of the false light claim) but also with regard to the defamation *per se* claim. As the Court found has found in ruling on various Defendants' motions to dismiss, Plaintiff failed even to plead actual malice. Plaintiff's rote recitation of the elements of actual malice does not meet the heightened standard for pleading actual malice in Illinois.

The New York Anti-SLAPP statute also provides for AKC's attorneys' fees if the Court finds the action to be "without a substantial basis in fact or law and [that] could not be supported by a substantial argument for the extension, modification or reversal of existing law." N.Y. Civ. Rights Law § 70-a. AKC argued, and Plaintiff did not dispute, that if AKC were to prevail on its accompanying 2-615 motion, Plaintiff could not establish that the action has a "substantial basis" under the New York anti-SLAPP statute. Having ruled in the AKC's favor on the 2-615 motion,

the Court finds that Plaintiff's Complaint did not have a substantial basis in fact or law and could not be supported by an extension of existing law.

In this situation, the New York legislature has provided for mandatory fee shifting. Under New York's anti-SLAPP statute, "costs and attorney's fees shall be recovered" by a prevailing defendant. N.Y. Civ. Rights Law § 70-a(1)(a). Because the AKC prevailed on its motion to dismiss, it is entitled to recover its fees in connection with this motion.

IT IS HEREBY ORDERED THAT:

All counts of the Complaint are dismissed with prejudice with regard to all Defendants. Plaintiff's objections, which were filed with regard to all of the motions to dismiss, are overruled. Plaintiff's motions to strike or dismiss, which also were filed with regard to all of the motions to dismiss, are denied.

In Addition, Counts I, II, V, and VI of the Complaint are dismissed with prejudice under the New York anti-SLAPP statute. Plaintiff is ordered to pay the AKC's costs and attorney's fees incurred in pursuing the anti-SLAPP motion, and the AKC is granted 14 days after entry of this order to submit a fee petition. Plaintiff will have 28 days to respond to the fee petition, and the Court will set a hearing on fees after the matter is fully briefed. Plaintiff's objections to the anti-SLAPP motion are overruled.

This is the final order of the Circuit Court of Sangamon County.

Entered:

Date: MAY 25, 2021

Honorable Adam Gigganti