

DEPARTMENT 47 LAW AND MOTION RULINGS

Case Number: 21STCV22573 **Hearing Date:** August 11, 2021 **Dept:** 47

Tentative Ruling

Judge Theresa M. Traber, Department 47

HEARING DATE: August 11, 2021

TRIAL DATE: Not set.

CASE: Christopher Avellone v. Karissa Barrows, et al.

CASE NO.: 21STCV22573

DEFENDANTS' MOTION TO QUASH, MOTION TO STRIKE (ANTI-SLAPP), AND/OR MOTION TO DISMISS

MOVING PARTY: Defendant Defendants Karissa Barrows and Kelly Bristol

RESPONDING PARTY(S): Plaintiff Christopher Avellone

CASE HISTORY:

- 06/16/21: Complaint filed.

STATEMENT OF MATERIAL FACTS AND/OR PROCEEDINGS:

On June 16, 2021, plaintiff Christopher Avellone ("Plaintiff") filed this action's complaint ("Complaint") against defendants Karissa Barrows and Kelly Bristol (collectively, the "Defendants"), wherein Plaintiff asserts 6 counts libel per se against the Defendants.

According to the Complaint, this action arises from Defendants' June 18, 2020, public statements that insinuated Plaintiff targeted young women, including women under the age of consent, by forcing them to become intoxicated for the purpose of engaging in non-consensual sexual contact. (Complaint, ¶¶ 21–24; Id., Exh. 1.)

Plaintiff has submitted Proofs of Service which reflect that the Defendants were served by mail with copies of the Summons and Complaint on June 18, 2021. The Court notes that the Defendants are not California state residents.

On July 19, 2021, the Defendants filed the pending Motion to Quash Service of Summons on the Defendant pursuant to California Code of Civil Procedure ("Code Civ. Proc."), section 418.10(a)(1), on the grounds that the Court lacks personal jurisdiction over them.

Notably, the Defendants have combined the pending Motion to Quash with a Motion to Strike (Anti-SLAPP) and/or Motion to Dismiss.

On July 29, 2021, the Plaintiff filed his opposition papers to the pending Motions.

On August 4, 2021, the Defendants filed their reply papers to Plaintiff's opposition papers.

TENTATIVE RULING:

After considering the evidence and arguments presented in the record, the hearing for Defendants Karissa Barrow's and Kelly Bristol's Motion to Quash is CONTINUED to August 24, 2021, at 9:30 a.m.

Furthermore, Defendants Karissa Barrow and Kelly Bristol are ordered to pay the filing fees for the Motion to Strike (Anti-SLAPP) and Motion to Dismiss, in addition to scheduling the respective hearings for these motions, at the same date and time as the hearing for the Motion to Quash.

Moving party to give notice, unless waived.

DISCUSSION:

Motion to Strike and Motion to Dismiss

Here, Defendants move the Court to strike portions of the Complaint and/or dismiss the pending action against them. As previously noted, the pending motion to quash was combined with two additional motions. While the Defendants paid the filing fee for the motion to quash, Defendants have yet to pay the filing fees for the special motion to strike (Anti-SLAPP) and for the motion to dismiss.

With respect to "motions," Code of Civil Procedure section 1003, provides "[e]very direction of a court or judge, made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion." (Id.) "The definitions of a motion and an order in a civil action are applicable to similar acts in a special proceeding." (Code Civ. Proc., § 1064)

A uniform fee for filing a motion must be paid for each motion listed under Code of Civil Procedure section 1005(a), which includes a motion to quash, motion to dismiss, and motion to strike (anti-SLAPP). (See Govt. Code § 70617(a)(1).) Payment of filing fees is "both mandatory and jurisdictional." (Hu v. Silgan Containers Corp. (1999) 70 Cal.App.4th 1261, 1269.)

In regard to filing motions with the courts, in general, the "papers" pertaining to any one motion may not be combined with the "papers" of a different motion (i.e., motions must be filed separately). California Rules of Court, Rule 3.1112(c), provides that a motion, notice of hearing and points and authorities, i.e., a motion's "papers," may be combined in a single document "if the party filing a combined pleading specifies these items separately in the caption of the combined pleading." That is, Rule 3.1112(c) provides that all papers relating to the same motion or demurrer may be combined, and not that parties may combine papers relating to separate motions.

Here, the Defendants improperly combined all papers for the special motion to strike, motion to dismiss, and motion to quash service into one document. Since the Defendants applied to this Court for three distinct orders, the Defendants have in fact filed three motions. (See Code Civ. Proc., § 1003.) Hence, Defendants should not have filed the motions together.

In addition, the Defendants scheduled only one hearing and paid the filing fee for only one of the three motions, i.e., the motion to quash. Nonetheless, the motions were "filed" for purposes of jurisdiction. A paper in a case is said to be filed when it is delivered to the clerk and received by him, to be kept with the papers in the cause. (Tregambo v. Comanche Mill & Mining Co. (1881) 57 Cal. 501, 506.)

Nonetheless, Defendants have paid less than they should have for the filing fees of the three pending motions. The fees have not been waived by the Court or its clerk. Further, payment of filing fees is "both mandatory and jurisdictional." (Hu, supra, 70 Cal.App.4th at 1269.)

Here, the Court cannot rule on the motion to quash without resolving the issues presented by the special motion to strike and motion to dismiss. Under Code of Civil Procedure section 411.21, if a party tenders payment for filing fees in an amount that is less than that required for the filed motion(s), then the court's clerk "shall" impose an administrative charge and provide mailed notice to the subject party that the amount it

tendered for the motion's filing fee was less than the amount actually required. (Code Civ. Proc., §§ 411.21(a), 411.21(e), 411.21(g).) The affected party has 20 days from the date of mailing of the notice to pay the remaining balance at issue, or else, the court's clerk "shall" void the filing, i.e., motion, as if it had never been filed. (Code Civ. Proc., § 411.21(b).)

Thus, the hearing for the Defendants Motion to Quash is continued to allow Defendants to pay the outstanding balance for the filing fees at issue pursuant to Code Civ. Proc., section 411.21.

Accordingly, the hearing for Defendants Karissa Barrow's and Kelly Bristol's Motion to Quash is CONTINUED to August 24, 2021, at 9:30 a.m.

Further, Defendants Karissa Barrow and Kelly Bristol are ordered to pay the filing fees for the Motion to Strike (Anti-SLAPP) and Motion to Dismiss, in addition to scheduling the respective hearings for these motions, on the same date and time as the hearing for the pending Motion to Quash.

Moving parties to give notice, unless waived.

IT IS SO ORDERED.

Dated: August 11, 2021

Theresa M. Traber
Judge of the Superior Court

Any party may submit on the tentative ruling by contacting the courtroom via email at Smcdept47@lacourt.org by no later than 4:00 p.m. the day before the hearing. All interested parties must be copied on the email. It should be noted that if you submit on a tentative ruling the court will still conduct a hearing if any party appears. By submitting on the tentative you have, in essence, waived your right to be present at the hearing, and you should be aware that the court may not adopt the tentative, and may issue an order which modifies the tentative ruling in whole or in part.
