

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE SIXTH APPELATE DISTRICT

COURT OF APPEAL CASE NO. H031130

SUPERIOR COURT CASE NO. CV064307

MORDECAI TENDLER,

Plaintiff and Appellant,

v.

JOHN DOE

Defendants and Respondents.

APPEAL FROM THE SUPERIOR COURT OF CALIFORNIA
FOR COUNTY OF SANTA CLARA
(The Honorable Neal A. Cabrinha)

BRIEF OF APPELLANT

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Plaintiff and Appellant, *Pro Se*

IN
THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE SIXTH APPELATE DISTRICT

CASE NO. HO31130

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Respondent/Defendant

John Doe

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Plaintiff and Appellant, *Pro Se*IN

**THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE SIXTH APPELATE DISTRICT**

MORDECAI TENDLER
(Plaintiff and Appellant)

VS

JOHN DOE
(Defendant and Respondent)

Court of Appeal Case No. H031130
Appeal from Superior Court Case No. CV064307

BRIEF OF APPELLANT

To the Honorable Judges of this Court:

I am representing myself pro se in this action. While I have studied the Court's website in a good faith effort to comply with the rules governing this brief, I ask the Court's indulgence if this submission is lacking in the traditional format or if it otherwise does not meet all of the applicable rules' requirements.

Introduction

This is an appeal from the final orders of the Superior Court for Santa Clara County (Hon. Neal A. Cabrinha) whereby the lower court ordered me to pay the Defendants' attorney fees and costs pursuant to CCP §425.16(c) (transcript pages 250-251), denied my application for reconsideration (transcript page 341), and granted Defendant's motion for award of costs and attorney fees in the amount of \$20,330.00 (transcript page 352).

This is a case of a terrible miscarriage of justice. I and my family have been the target of a multi-year incessant internet campaign of harassment, defamation and threats, which, despite a total lack of due process fact finding in the U.S. legal system or elsewhere, ultimately led to the loss of my reputation and livelihood. The tactics used by the individuals behind this campaign should shock the conscience of the Court and run counter to every value cherished by the U.S. Constitution. The inflammatory statements and arguments used by the Defendants in this case and their mercenary lawyers to paint *my* actions as having a chilling affect on the exercise of free speech and other Constitutional rights would be laughable if not for the perversion of justice which, so far, seems to have prevailed in the California judicial system. I now turn to this honorable Court to rectify this terrible wrong.

Underlying History

Since at least 2004, internet blogs and websites have been created and/or used to levy the most vicious and defamatory accusations against me. With the encouragement and active leadership and participation of certain rabbis, among them Yosef Blau and Mark Dratch (the sole affiants on which Paul Alan Levy, the lawyer who supposedly represents the Defendants in this case, based his ridiculous foundation on which he brought the Anti-SLAPP motion), thousands of internet pages were filled with the most outrageous claims and vilifications against me and my family (a *small sampling* of which were submitted to the lower court in this action (transcript pages 297 - 324)). Ultimately, Blau and Dratch were able to get the Rabbinical Council of America (RCA), an informal but powerful "trade association" of rabbis of which I was a member, to "investigate" the claims. Without due process, and in the face of overwhelming exculpatory evidence, the RCA expelled me from its membership (transcript page 33).

Because of separation of church and state principles, I was advised that a case against the RCA would be ineligible for hearing in U.S. courts. I attempted to sue the RCA in Jewish rabbinical courts in New York (which have the legal status of arbitration panels in New York and many other states), but the RCA refused to agree to submit our dispute to a rabbinical court acceptable to me. Given the RCA's power within the American rabbinate, I sued the RCA (and certain individuals including Blau and Dratch) in rabbinical court in Israel (transcript page 33). The Israeli rabbinical court (which, under Israeli law, has the status of a legal judiciary) found that the RCA grossly violated all principles of fairness and due process and ordered my reinstatement. The defendants in my Israeli action have refused to comply with the orders of the Israeli rabbinical court and were found in contempt by the Israeli rabbinical court. Sadly, I have no recourse to enforce that judgment here.

So, far from being "defrocked" as lawyer Levy is fond of constantly saying in his incendiary court filings (which are reproduced by Levy and his "clients" on the internet

almost as fast as they are filed in the court), my position and claims were upheld by the only independent body to have heard the issues at hand.

My only recourse for the enormous harm done to me by the false accusations was to develop secular causes of action which would be heard by secular courts in the U.S. Defamation and possibly tortious interference with contractual relationship were the most obvious causes of action available to me – if only I could identify the sources of the lies. In order to do so, I filed suit in Ohio which, in addition to allowing me to file a defamation action against unnamed defendants thereby allowing discovery to begin, is also the state from which I suspect some of the defamatory materials (particularly some of Blau's statements) originated.

Any reader of the blogs devoted to defaming me would be shocked by the venomous content of those blogs. They even included threats of physical harm for which I filed a complaint and met with the FBI (transcript page 293). Subpoenas to Google, as the host of certain blogs, were issued in the Ohio litigation (transcript pages 8-17). These were real subpoenas for a real legal purpose. Far from the ridiculous and baseless self-enriching claim put forth by lawyer Levy, my claims are real and my goals in issuing the subpoenas were to eventually show that certain individuals had defamed me but were attempting to hide behind the anonymity of the internet. In particular, I believe that had I obtained the subpoenaed information, I could have proven that Blau and Dratch, key players in the RCA's kangaroo proceedings against me, were also key players behind the internet defamation campaign thereby further discrediting the RCA proceedings and action. I also believe that I would prove that in an effort to blatantly defame me under the protective guise of quoting "reliable sources", the blogs and a related website acted in concert (and were likely even operated by the same individual) to merely quote one another's defamatory statements.

Sadly, my strategy was thwarted by the questionable actions of DC lawyer Paul Alan Levy and his Public Citizen Litigation Group, with the help of Cindy Cohn as local California counsel. By using California's Anti-SLAPP Law (CCP §425.16), they have

protected the mafia-like actions of powerful individuals against innocent citizens. How ironic, and what a miscarriage of justice, for Levy to use a law intended to protect citizens' Constitutional rights to deliberately and unashamedly prevent the exercise of my Constitutional rights!

While the overwhelming majority of the members of my congregation supported me, the blogs and the people behind them kept hammering away at various members and officers of my congregation. Eventually, this targeted campaign led to my termination from my congregation (transcript page 33), and I have sued the congregation for breach of contract in New York (transcript page 163), which case is currently on appeal. In addition, members of my congregation have sued the congregation's board members derivatively for their illegal actions in terminating me, which suit is also on appeal. I am also defending a suit in New York brought by a woman who claims that I assaulted her, which case is also on appeal. If discovery proceeds in those actions and if those cases continue in litigation, I may have the opportunity to find out who is behind the blogs without the Ohio action and have the ability to file counterclaims or third-party claims.

Arguments

- 1. I was not represented by counsel in California, did not have notice of most of the proceedings in California, and did not have the opportunity to defend myself.**

I have no business or presence in California. I had Ohio subpoenas served on Google since Google is worldwide in its hosting of the offending blogs. Of course, Google's headquarters are in Santa Clara County. For reasons which I do not understand (other than to trap me into unintentionally coming under the jurisdiction of California's courts), Google refused to comply with the subpoenas unless the subpoenas were confirmed by a California court. On advice of Ohio counsel, I paid a small one-time fee to a California lawyer to handle the process. That was the limit of my California involvement and the limit of my "engaging" a lawyer in California. I never engaged a lawyer, and never had a lawyer, to represent me in lawyer Levy's harassing, self-enrichment actions against

me. In fact, the first time I saw most of the documents in the transcript of this case was on reading, with great interest, the transcript of the case prepared by the Clerk of this Court. Levy can try to paint any picture he wants, but the fact is that no lawyer ever represented me in this matter.

When I finally found out that the trial court in Santa Clara County seemed to be buying Levy's garbage, I repeatedly asked the judge to give me time to respond (transcript pages 293-324, 358-359), but to no avail (transcript pages 341, 360 and 362). I also had insufficient, if any, notice of any hearings which took place on this matter and cannot even determine from the transcript if any hearings actually took place. I ask this Court to recognize this abuse of the judicial system and rectify this gross miscarriage of justice.

Since I was not aware of what was winding its way through the California judiciary, I cannot comment on any steps or missteps taken by Levy and Cohn or any other lawyers in this case at any juncture of the case, as I now read in the transcript (transcript pages 34-36 and 217-218). Levy's attempt to color what happened as shrewd strategy on my part to avoid the Anti-SLAPP action is simply false.

Levy himself noted (transcript pages 268-269) that my inaction in this case allowed for his SLAPP motion to be simple, and how easy it would have been for me to mount a significant, if not winning, defense to his suit. Had I been represented by counsel, had timely notice of the proceedings, and/or been strategizing how to avoid the SLAPP motion, I would most definitely have taken those steps. The problem was that I had no notice of what was happening in California until it was too late.

The lower court's Orders should be reversed since I did not have an opportunity to defend myself.

- 2. The Anti-SLAPP Law should not be applied to my actions in seeking subpoenas against the blogs as they do not fall within the intent of the Anti-SLAPP Law.**

In order to make his motion for outrageous attorney fees, Levy needed to construct three fictions. First, he has attempted to construe my actions as intended to chill freedom of speech (transcript pages 169-170). Second, he needed to draw the blogs as simple innocent folk deserving of the protections of the Anti-SLAPP Law (transcript pages 170-171). Third, he had to paint me as one of the individuals which the California legislature intended to be covered in its Anti-SLAPP Law (transcript pages 167-168).

Intended chilling of free speech. As stated above, my actions had one goal – to identify those defaming me so I could take *judicial* measures to seek redress of substantial harm done to me by the individuals behind the anonymous blogs. Unlike Levy, whose actions played on the internet for mass appeal to further defame me, I sought to quietly and legally obtain the identities of those harming me so I could pursue legal remedies. Levy, in his continuous unethical efforts to sway the courts to believe his fictions, has tried to paint me as a master strategist with legal maneuvers worthy of Hollywood, but it is false.

Levy's arguments (transcript pages 46-50) that I should have laid out my case in total when confirming the subpoenas in the Superior Court for Santa Clara County, and then let the judge decide whether I have a case, is patently absurd. Would this be the standard adopted by the California judiciary, the result would be that California (as the home state for much of cyberspace's earthly domains) would abrogate to its judiciary the exclusive power to adjudicate internet defamation claims, even when none of the actions had any connection to California. This cannot be what our Founding Fathers had in mind when freedom of speech was guaranteed in our Constitution. To urge the Court to adopt this standard is ridiculous.

The Anti-SLAPP Law's protected parties. The blogs are not innocent folks simply seeking an outlet for free and protected speech. Even a cursory reading of the venom on the blogs shows the hatred and bad intentions of the blogs (transcript pages 297-324). Levy has asked the California courts to adopt expansive protections for all speakers to include what these blogs have done to me (transcript pages 37 *et seq.*).

The hatred alone would be suspect enough. Yet, even without the hatred, the idea that any speaker would have anything to fear – other than legal liability – for speaking openly against me is another Levy fiction (transcript pages 51-52). As support, he cites Blau and Dratch, each of whom has a huge self interest in keeping the blogs anonymous, as discussed above. While my family is respected within the Jewish and secular communities, it is outrageous and completely false that I or my family are “powerful” or “well-connected” in the sense that we wield any mafia-like power to harass, shun, ostracize, excommunicate or banish any individual or group or that we have ever done so. Dratch’s own Affidavit (transcript pages 107-108) shows how my father and family are completely powerless to stop physical and verbal harassment against our “powerful” family, underscoring the absolute fallacy of his and Blau’s sworn statements that we wield power to hurt others. The RCA’s action against me is another proof of the fallacy of those claims. Blau and Dratch have also perjured themselves when they lied in Blau’s statement that my family is “notorious for playing hardball with its critics” (transcript pages 52, 107 and 148). Members of my family have been subject to criticism over many decades and never were any actions threatened or taken against those leveling the criticism in any manner whatsoever.

As Levy himself notes (transcript page 37), being subject to true legal liability is not protected under the Anti-SLAPP Law. The only thing the anonymous blogs have to fear from me or my family is a legitimate lawsuit, and they are not entitled to the law’s protection from being sued. It will be up to me to make my case and them to defend based on the standards of proof when and where the suit is brought. But I can’t bring a suit until I know who I am suing, and Levy is illegally using California’s Anti-SLAPP Law to prevent me from exercising my legitimate rights.

The Anti-SLAPP Law’s intended bad actors. I am not a public figure in any sense of the word. The matter at hand is not one of broad interest to the public. It is the bloggers, with their defamatory statements, who *created* the aura of public interest. To now paint me as a public figure within the intent of the Anti-SLAPP Law is false and

absurd.

Levy argues (transcript page 168) that the statements made on the offending blogs fall under subdivisions (e) (2), (3) and (4) of the Anti-SLAPP Law. Subdivision (e)(2) is wholly inapplicable since the defamatory statements were made long before any of legal actions surrounding this case were initiated. As to the other subdivisions, I am not a public figure and it is the bloggers with their defamatory statements who made this into any public issue.

In short, my actions in filing suit and seeking information from Google about the anonymous bloggers are not those meant to be protected against by California's Anti-SLAPP Law, and this case is not the case in which the California courts should make new law.

The lower court's Orders should be reversed since the Anti-SLAPP Law is not applicable to my actions.

3. The claim for attorney fees and costs far exceeds any amount appropriate under the Anti-SLAPP Law.

Even according to Levy's and Cohn's own calculations, 39% of the time Levy and local counsel have worked on this matter came *after* the August 2, 2006 withdrawal of the subpoenas (transcript pages 273-274 and 281-282). As I state elsewhere in this submission to the Court, I vigorously maintain that Levy and company are not entitled to one penny from me under California's Anti-SLAPP Law; but even assuming, *arguendo*, that legal fees to squash the subpoenas should be paid, never did any of these mercenary self-enriching lawyers attempt to send me a bill for the time spent to stop the subpoenas. If Levy and local counsel are such noble public servants whose only interest is to protect free speech, their work should have ended when their mission was accomplished. Sadly, their interest is far more basic; they just want to rip innocent people off with outrageous claims and legal charges and prevent the legitimate exercise of Constitutional rights.

Furthermore, Levy was not admitted to this case until August 29, 2006 (transcript page 229). Nearly 87% of the time he spent and for which he is charging (transcript pages 281-282) was spent before he was even authorized to practice law in California. It is improper for the court to award him fees for the unauthorized practice of law.

Finally, California's Anti-SLAPP Law states, in CCP §425.16(c), "[A] prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs." As Levy has stated in his affidavit in support of his motion for attorney fees (transcript page 281), "Because PCLG is a public interest law firm, we do not bill clients for our services." Accordingly, the defendant did not incur attorney's fees and costs (at least with respect to Levy's work) which are recoverable under CCP §425.16(c).

The lower court's Orders should be reversed since the amount of costs and fees assessed is grossly in excess of any amount to which the Defendant is entitled under the Anti-SLAPP Law.

Conclusion

I have been severely harmed by the individuals behind the offending blogs about which I had subpoenas issued. I have a real case against them but cannot proceed to develop the case until I know who they are. Lawyers purportedly representing the Defendants in this case have perverted the purpose of California's Anti-SLAPP Law and are using it to oppress, threaten and harass innocent citizens and prevent their exercise of Constitutional rights.

While California has enacted an Anti-SLAPP Law, the actions of the individuals behind the blogs which have harmed me are not those intended to be protected by the Anti-SLAPP Law, and I am not the public figure whom the Anti-SLAPP Law was meant to address. The lawyer seeking huge legal fees in this case himself has acknowledged that this case would extend the law's protections; however, this is not the case to make new law.

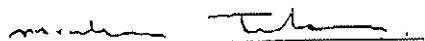
Furthermore, while the Anti-SLAPP Law is wholly inapplicable here, even according to Levy's own calculations, his goal of getting the subpoenas cancelled was accomplished long before the outrageous expenditure of legal fees. Thus it is clear that the Anti-SLAPP motion is not about protecting rights but about enriching mercenary lawyers.

For all of the above reasons, I respectfully ask this Court to reverse the Orders of the Superior Court for Santa Clara County.

Respectfully submitted,

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I hereby certify that the above brief contains 3,280 words.


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**CALIFORNIA COURT
OF APPEAL
SIXTH APPELATE DISTRICT**

CASE NO. H031130

PROOF OF SERVICE

I, Mordecai Tandler, declare that I am the appellant in this case and that on May 31, 2007 I faxed a copy of the documents listed below to:

Cindy Cohn
Electronic Frontier Foundation
Fax 415-436-9993

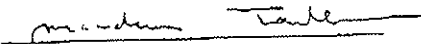
Paul Alan Levy

Public Citizen Litigation Group
Fax 202-588-7795

Documents:
Brief of Appellant
Certificate of Interested Entities or Persons
Proof of Service

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: May 31, 2007


Mordecai Tendler

**CALIFORNIA COURT OF APPEAL
SIXTH APPELATE DISTRICT**

CASE NO. HO31130

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