IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division

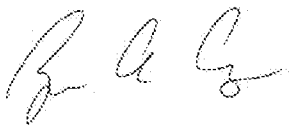
CLOSE IT! TITLE SERVICES, INC., et al. Plaintiffs v. MICHAEL S. NADEL, et al. Defendants.	Case No. 2018 CA 005391 B Judge William M. Jackson NEXT EVENT: Initial Conference, Friday October 26, 2018 at 9:30 a.m.

SPECIAL MOTION TO DISMISS (OPPOSED)

Defendants Sean Smith and Erin Wrona move specially under D.C. Code § 16-5502 for an Order by the Court dismissing the complaint with prejudice. For the reasons stated below in their points and authorities, the District of Columbia's anti-SLAPP statute immunizes Smith and Wrona from this suit. If the Court should order dismissal of the complaint, Smith and Wrona also request that the Court award them their reasonable attorney's fees and costs to bring this motion under D.C. Code § 16-5504. A proposed form of Order accompanies this motion.

August 24, 2018

Respectfully submitted,



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POINTS AND AUTHORITIES

1. Plaintiffs Close It! Title Services, Inc. d/b/a Federal Title & Escrow Company ("Federal Title") and Todd Ewing ("Ewing") filed this defamation action in retaliation for an underlying lawsuit that Defendants Sean Smith and Erin Wrona ("Smith and Wrona") filed against Federal Title and Ewing (among others) to recover about $1.6 million that was intended to be used to purchase a home, but which was stolen before the closing of the purchase. The underlying lawsuit was first filed in federal court, but now is pending before Judge Rigsby in this Court. *See Smith et al. v. Federal Title and Escrow Co.*, Case No. 17-cv-1580 (D.D.C. 2017) (Lambreth, J.) and *Smith, et al. v. Federal Title & Escrow Co., et al.*, Case No. 2018 CA 004613 B (D.C. Super. Ct. 2018).

2. By filing their defamation countersuit, Federal Title and Ewing intend to intimidate and silence Smith and Wrona about their underlying lawsuit. *See Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1226 (D.C. 2016) ("[T]he goal of a SLAPP 'is not to win the lawsuit but to punish the opponent and intimidate them into silence.'") (internal citations and quotation omitted). By Federal Title's own admission, the underlying lawsuit is a matter of public interest because the "incident should serve as a reminder *to the public* about the importance of cybercrime *awareness and education*." *See* Compl., Exh. A at 3 (emphasis added).

3. Federal Title's and Ewing's defamation countersuit turns on statements made by Smith's and Wrona's attorney for their underlying lawsuit to a local National Public Radio affiliate station in response to a reporter's inquiry about the recently-filed (then) complaint in the federal court. The reporter wrote a story about the case, quoting Smith's and Wrona's attorney in parts, which then was published on the station's website together with a hyperlink to a copy of the federal court complaint. Readers of the story have ready access to the underlying legal

theories and claims as presented to the federal court. *See* Compl., Exh A at 1 and https://wamu.org/story/17/08/08/hackers-allegedly-steal-1-5-million-d-c-couple-home-buying-phishing-scheme/ (online version with hyperlink to complaint). In the article, Smith's and Wrona's attorney is attributed to comments about the legal claims made in their federal complaint, which has eight counts: (1) a civil RICO violation, (2) conversion, (3) civil conspiracy, (4) negligence, (5) breach of contract, (6) breach of the implied covenant of good faith and fair dealing, (7) breach of fiduciary duty, and (8) legal malpractice, for recovery of their stolen purchase money.

4. The District of Columbia's anti-SLAPP statute requires that the moving party "make[] a prima facia showing that the claim at issue arises from an act in furtherance of the right of advocacy on issues of public interest, then the motion *shall be granted* unless the responding party demonstrates that the claim is likely to succeed on the merits, in which case the motion shall be denied." D.C. Code § 16-5502. The statute defines an "[a]ct in the furtherance of the right of advocacy on issues of public interest" as "*any written or oral statement 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; or [i]n a place open to the public *or a public forum in connection with an issue of public interest*." D.C. Code § 16-5501(1) (emphasis added). In the words of the District of Columbia Court of Appeals, "[t]he purpose of the special motion to dismiss is to protect a 'particular value of high order'– the right to free speech guaranteed by the First Amendment – by shielding defendants from meritless litigation that might chill advocacy on issues of public interest." *Competitive Enter. Inst.*, 150 A.3d at 1226.

5. Federal Title's improperly motivated countersuit is designed to silence Smith and Wrona and their attorney from discussing the underlying suit with the media and it bears directly,

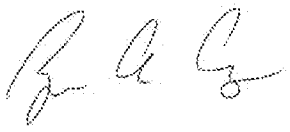
by Federal Title's own admission, upon issues of interest and importance to the public. The subject matter of Smith's and Wrona's underlying lawsuit against Federal Title and Ewing (among others) concerns matters of great interest to the public that are discussed in the public forum daily: fraud, deception, cybersecurity, and malicious computer hacking. *See* D.C. Code § 16-5501 (Issues of public interest include issues related to health or safety, economic or community well-being, or a service in the marketplace.); *see also Order, TS Media, Inc., et al. v. Public Broadcasting Service*, Case No. 2018 CA 001247 B (D.C. Super. Ct. May 15, 2018) (Epstein, J.) (Dismissing SLAPP tort claims in a case involving allegations of sexual misconduct at "a time of extraordinary public interest in alleged sexual misconduct by men in positions of power . . .."); Complaint Exh. A at 2 (story that is the subject matter of this suit relating that the scheme that ensnared John Podesta, chair of Hillary Clinton's presidential campaign, used a similar email hacking technique); *DNC says suspected hack attempt turned out to be a security test*, The Washington Post, Aug. 23, 2018 (https://wapo.st/2PxJqX5?tid=ss_mail&utm_term=.6d51c3fe7a97) (news article contemporaneous with this motion regarding cybersecurity and describing "constant attempts to hack the DNC and our Democratic infrastructure"). The District of Columbia's anti-SLAPP statute therefore protects the statements made by Smith's and Wrona's attorney to a reporter inquiring about the case and immunizes Smith and Wrona from Federal Title's and Ewing's efforts at intimidation by countersuit.

6. The legal deficiencies of the individual claims in Federal Title's and Ewing's complaint are discussed in the points and authorities for Smith's and Wrona's alternative motion to dismiss the complaint under Rule 12(b)(6) filed concurrently with this motion, which are incorporated here by reference.

7. The District of Columbia Court of Appeals has held that D.C. Code § 16-5504 contemplates a presumptive award of reasonable attorney's fees and costs of litigation to the prevailing movant. *See Doe v. Burke*, 133 A.3d 569, 576-77 (D.C. 2016). Should Smith and Wrona prevail on their motion, they request the presumptive award of their reasonable attorney's fees and costs for bringing this motion.

RULE 12-I CERTIFICATION

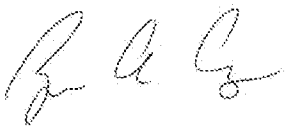
On August 23, 2018, I contacted Andrew J. Lawrence, counsel for Federal Title and Ewing, to inquire whether plaintiffs would oppose this motion. Mr. Lawrence conveyed that the plaintiffs would oppose.



Bryan A. Carey

CERTIFICATE OF SERVICE

I certify that I will file the foregoing motion and proposed order on August 24, 2018, by the Court's electronic filing system that will serve copies upon counsel for plaintiffs by electronic transmission. Defendant McDermott Will & Emery LLP will be served with a copy by email to Joshua David Ragaczewski (jrogaczewski@mwe.com) and Defendant Michael S. Nadel will be served with a copy by email (mnadel@mwe.com).



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