

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

ARTHUR G. NEWMYER, individually and on)	
behalf of his minor daughter, L.N)	
)	
Plaintiffs)	
)	
v.)	
)	Civil Action No.: 2011 CA 003727 M
)	Calendar No. 7
THE SIDWELL FRIENDS SCHOOL,)	Judge Michael L. Rankin
)	
and)	
)	
JAMES F. HUNTINGTON)	
)	
Defendants)	
)	
_____)	
)	
JAMES F. HUNTINGTON)	
)	
Counter-Plaintiff)	
)	
v.)	
)	
ARTHUR G. NEWMYER,)	
)	
Counter-Defendant)	

**ORDER DENYING PLAINTIFF/COUNTER-DEFENDANT ARTHUR NEWMYER’S
SPECIAL MOTION TO DISMISS PURSUANT TO THE D.C. ANTI-SLAPP ACT¹**

Counter-Defendant Arthur G. Newmyer seeks dismissal of Counter-Plaintiff James F. Huntington’s claims for defamation; false light invasion of privacy; tortious interference with contract; and intentional infliction of emotional distress, on the basis of the District of

¹ This “special motion” was filed as part of Arthur Newmyer’s “12(b)(6) Motion to Dismiss the Counter Complaint for Failure to State a Claim Including Special Motion to Dismiss Pursuant to the District of Columbia Anti-SLAPP Act,” filed February 29, 2012. This order deals only with the portion of the motion to dismiss seeking dismissal pursuant to the Anti-SLAPP Act, and does not make a ruling on the motion to dismiss pursuant to Super. Ct. Civ. R. 12(b)(6). That portion of the motion shall be resolved in a forthcoming ruling.

Columbia’s “Anti-SLAPP Act of 2010”² (hereinafter “the Anti-SLAPP Act” and “the Act”).

Dr. Huntington’s opposition notes that the special motion to dismiss is untimely because it was filed more than forty-five days after his counter-suit was filed; he argues, moreover, that the motion is “misplaced” and frivolous. He seeks attorney’s fees and costs for having to defend against the motion.³

The court agrees that this special motion to dismiss is untimely filed and can be denied for that reason alone. In light of the purpose of the Act—to protect citizens against strategic lawsuits that are designed to have a chilling effect on the exercise of political rights, including freedom of speech on matters important to the public—one who feels victimized by such a strategic lawsuit has the burden of complying with its time frame. Nevertheless, if the court viewed Dr. Huntington’s counter-suit as a purely strategic effort to silence Mr. Newmyer, or to punish him for exercising his right to bring his lawsuit, the court might very well conclude that the ameliorative purpose of the Act requires a more flexible interpretation of the forty-five day framework.

More fundamentally, Dr. Huntington is correct when he argues that Mr. Newmyer has failed to show that the Anti-SLAPP Act applies to the counter-suit, even though the suit is grounded in the law of defamation, the typical setting for a SLAPP suit. Here, there is no other indication that this is a claim designed to silence or punish one for speaking out on issues of public importance. Without engaging in an analysis of whether Mr. Newmyer’s lawsuit extends to matters of importance to the public or whether Dr. Huntington is a public figure, it suffices to note that there is no economic bullying here by Dr. Huntington, and his claims are not likely to deter Mr. Newmyer from being heard on his contentions. Therefore, the counter-claim will not

² Strategic Lawsuits Against Public Participation, D.C. Code § 16-5501, *et seq.*

³ *See* D.C. Code § 16-5504.

be dismissed based on the Anti-SLAPP Act.

As noted, the Act permits the court to award attorney's fees and costs to the "responding party" if the motion is frivolous or is solely intended to cause unnecessary delay. In deciding whether Mr. Newmyer's motion should be regarded as frivolous, the court recognizes that a motion is frivolous when it is "wholly lacking in substance" and not "based upon even a faint hope of success on the legal merits." *In re Spikes*, 881 A.2d 1118, 1125 (D.C. 2005), citing *Slater v. Biehl*, 793 A.2d 1268, 1278 (D.C. 2002). The court should consider whether the claim for relief is warranted under existing law and the plausibility of the position taken. *Id.* at 17–18. Dr. Huntington asserts that Mr. Newmyer filed the motion to delay or avoid discovery, particularly discovery of his actions in disseminating the contents of his complaint.

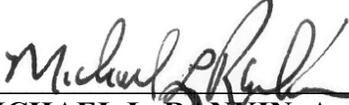
Newmyer makes the case that his special motion meets the criteria found in D.C. Code § 16-5501(1)(B)(3), advocating issues of public interest and statements concerning matters pending consideration by public bodies. Of course, the statute is available to any litigant, rich or poor, who can assert its substantive protection to shield against harassing lawsuits; however, it is incredulous that Mr. Newmyer would view Dr. Huntington's defamation counter-claim as an offensive weapon of intimidation. It is not clear that the special motion to dismiss was filed for purposes of delay, but it is clear that the special motion is baseless and, therefore frivolous. Dr. Huntington may therefore submit a proposed order for attorney's fees along with an accompanying memorandum that explains how the fee was calculated.

ACCORDINGLY, it is this 22nd day of May, 2012, by the Superior Court of the District of Columbia, hereby

ORDERED, that the special motion to dismiss based on the D.C. Anti-SLAPP Act be, and hereby is **DENIED**; and it is further

ORDERED, that Counter-Plaintiff James F. Huntington may submit a proposed order for attorney's fees, along with an accompanying memorandum that explains how the fee was calculated, not later than June 5, 2012.

So ORDERED.



MICHAEL L. RANKIN, Associate Judge

May 22, 2012

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