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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

-----x	
JENNIFER B. CAMPBELL,	:
	:
Plaintiff,	:
	:
versus	:
	:
CGI Group, Inc., et al.,	:
	:
Defendant.	:
-----x	
	Washington, D.C.
	Wednesday, February 20, 2013

The above-entitled action came on for a motions hearing, before the Honorable JOHN MOTT, Associate Judge, in Courtroom Number 221.

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APPEARANCES:

On behalf of the Plaintiff:

ALAN LESCHT, Esquire
CONNIE TRAVANTY, Esquire
Washington, D.C.

On behalf of the Defendant:

STEVE HORVATH, Esquire (Compass Solutions)
KEITH HUDOLIN, Esquire (CGI)
Washington, D.C.

Stephanie M. Austin, RPR, CRR (202) 879-1289
Official Court Reporter

1 Horvath for the -- Compass Solutions.

2 Your Honor, if Your Honor --

3 THE COURT: Excuse me one second, please. I'm
4 going to make sure my phone is off. Which should be a
5 good --

6 MR. HORVATH: I checked. I hope mine is.

7 THE COURT: Which should be a good idea. Okay.

8 MR. HORVATH: I was in court in 1989 and I had a
9 client with a phone the size of a brick that went off, and
10 everyone laughed in the courtroom, and that was the one
11 free phone call someone got. After that, not allowed.

12 THE COURT: Times have changed.

13 MR. HORVATH: Yes.

14 THE COURT: But only so much.

15 MR. HORVATH: That's right.

16 THE COURT: Go right ahead.

17 MR. HORVATH: Your Honor, there is, as Your
18 Honor pointed out, motions to dismiss. And if the Court
19 grants the motions to dismiss, I think this entire hearing
20 is moot.

21 But this is much more than that, because it's my
22 interpretation of the anti-SLAPP Act that if I make a
23 prima facie showing, not -- it's a prima facie showing,
24 not burden of proof, not everything else, just the bare
25 minimum case, then the burden shifts to the plaintiff to

1 show that they are -- have a likelihood of recovery, a
2 likelihood, which means more likely than not or more
3 probable than not.

4 THE COURT: So you make a prima facie showing,
5 they have to prove likelihood of success on the merits,
6 and if they don't, the case is dismissed?

7 MR. HORVATH: That's correct.

8 THE COURT: Okay. That's your analysis?

9 MR. HORVATH: That's my analysis.

10 THE COURT: Does the plaintiff agree that that's
11 how things work?

12 MR. LESCHT: No.

13 THE COURT: All right. Well, we'll get to you.
14 Yes.

15 MR. HORVATH: The statute says that -- if I
16 could read it correctly.

17 THE COURT: We're talking about 16-5502?

18 MR. HORVATH: 16-5502, Subsection B, says: "If
19 a party filing a special motion under this section makes a
20 prima facie showing" --

21 THE COURT: Right. I see that.

22 MR. HORVATH: -- "that the claim at issue arises
23 from an act in furtherance of the right of advocacy on
24 issues of public interest, then the motion shall be
25 granted." That's very simple. "Unless the responding

1 party" -- that's the plaintiff -- "demonstrate that the
2 claim is likely to succeed." Which "likely" means, it's
3 my understanding is more likely to --

4 THE COURT: Likely means what likely means.

5 MR. HORVATH: Yeah. It's interesting because
6 this is copied after other statutes, and they -- some
7 places use "likely," some use "probable." But I think the
8 meaning is the same here. And so that's a basic question.

9 So the first question that the Court has is
10 whether or not there is an act in furtherance of the right
11 of advocacy on an issue of public interest. The -- on
12 that issue, the evidence, and the only evidence on the
13 reason for why my client spoke to Director Turnage, is
14 contained in the affidavit. And that affidavit states
15 that after reciting all the problems he had about the
16 irregularities, he said "because of my concerns about the
17 conduct of Ms. Brooks-Browns and Mr. Simon and the
18 treatment Compass had received from DHCF, I contacted
19 Wayne Turnage, the director of the District of Columbia
20 Department of Healthcare Finance." That is clearly, under
21 the definition of the -- some matter of public interest
22 falls squarely into that, and the question is whether or
23 not --

24 THE COURT: Why does it fall squarely into the
25 matter of public interest? Just because he contacted a

1 public official?

2 MR. HORVATH: Well, a little bit more.

3 It has to relate to, one, an issue involving
4 health or safety. And clearly the Healthcare Act is
5 health or safety; two, it involves an issue relating to
6 the District government. No question. Treatment by the
7 Department of Health committee on finance is the District
8 government. And three, it involves potential public
9 figures. And if you read the article that they're relying
10 on, the plaintiff, Jennifer Campbell, there's no question
11 she is a public figure.

12 We've cited a case from Judge Burgess where he
13 pointed out the fact that where you have someone who's a
14 COO of a government entity that has a \$2.5 billion budget,
15 it has 48 employees, there's no question that she would be
16 considered a public figure in that position. It's not
17 some lower-level. She's the chief operating officer of
18 that organization, and -- with probably the largest budget
19 or one of the largest budgets in the District of Columbia.

20 So, so long as it relates to an issue related to
21 the District government or health or safety or a public
22 figure, any of those things is -- they're all in the
23 alternative, they apply.

24 Now, counsel is probably going to get back up
25 and say, well, it involved a purely primary interest.

1 That's their burden of proof. We cited a case from
2 California that had the same law that we do, and under
3 California law, the burden -- they're trying to have an
4 exclusion apply that they have to have -- show that the
5 communication was directed primarily protecting the
6 speaker's commercial interest. And there's absolutely no
7 evidence of that. None.

8 So the question is, do we have a prima facie
9 showing. That's the first thing that we have to do. Just
10 a prima facie. Don't have to win anything else like that.
11 But a prima facie showing that there was an oral statement
12 that was made in connection with an issue under
13 consideration for review. There's no question that,
14 according to Turnage, he was already aware of the facts
15 and was investigating it. That's the affidavit of
16 paragraph 13, and that it involves communication with
17 petitioning the Government.

18 There's no question that this is an issue under
19 consideration. There's no question that it involves a
20 petitioning to the Government. No question it involves
21 the issue under review.

22 THE COURT: What's the issue under
23 consideration?

24 MR. HORVATH: According to the affidavit,
25 Director Turnage was aware of the fact they're talking

1 about the conduct that was going on in paragraph -- the
2 paragraphs above. That's what it's related to.

3 THE COURT: My concern's about the conduct.

4 MR. HORVATH: The conduct --

5 THE COURT: But is that an issue under
6 consideration?

7 MR. HORVATH: The Department of Health -- and I
8 keep on -- DHCF. They were considering what was going on
9 with how their contracts were being let, because that's
10 under review.

11 You look at the affidavit, I informed Director
12 Turnage of the information, which is what happened and how
13 the contract was being evaluated. Director Turnage was
14 already aware of this fact through his own investigation.

15 So he's investigating an issue concerning with
16 how the department is operating its contracts and the
17 conduct involving various individuals under these
18 contracts. He is looking into that issue, and it
19 ultimately led to the termination of the head of the
20 department.

21 Clearly the propriety and the conduct of the
22 department, how contracts were being let, steering
23 contracts, there's no question that is an issue which is
24 under consideration or review by the executive. I can't
25 think of a more important issue than impropriety dealing

1 with contracts as to say that that is an issue that is
2 under consideration.

3 And so for those reasons, I believe that is the
4 prima facie showing. The Court doesn't have to say -- I
5 view it as when you have -- you know, you come into court
6 on an initial criminal matter and the initial hearing on
7 the criminal matter, what's the standard? You have to
8 have a prima facie case. And you may not agree with all
9 of it, but if you've got the elements there, that's it.
10 That's all we have to do.

11 THE COURT: But it's different because you have
12 a -- you're saying -- if you have a prima facie case, then
13 the case is over.

14 MR. HORVATH: No.

15 THE COURT: With the Government, they have to
16 have a prima facie case to move ahead.

17 MR. HORVATH: Absolutely. But it's the same
18 standard.

19 Now what happens is, the burden goes to the
20 plaintiff. They say, okay, you've made this prima facie
21 case, you show me that you have the case. It doesn't say
22 the case is over, but it says now the burden shifts to
23 them to say that they have a case. And so that's --
24 there's a very simple procedure for doing that. And the
25 whole purpose is to have an early hearing to say we have a

1 valid case. Because you consider what it is is the
2 Anti-SLAPP, Strategic Lawsuits Against Public
3 Participation. Well, let's talk about the allegations
4 then against my client, because those allegations are what
5 control here.

6 And if you look at the allegations in the
7 lawsuit, most of the allegations actually relate to CGI.
8 I don't want to pick on them because I don't think they've
9 done anything wrong either. But most of the allegations
10 relate to CGI. So we have a couple of allegations that
11 relate to my client.

12 Interestingly, there's not one place in the
13 complaint that says that my client made Statement A, B or
14 C. No place. And in the affidavits, there is nothing in
15 there that says my client made this statement to Turnage.
16 In fact, the, supposedly, letter, which controls this
17 whole thing, has not even been offered by the plaintiff in
18 this case for Your Honor's review as to show their
19 likelihood of success. They haven't even said this is
20 what it says. We don't have that document.

21 So I don't know -- we're dealing with, at most,
22 hearsay within hearsay within hearsay. That is,
23 supposedly, my client said something to Mr. Turnage, and
24 then Mr. Turnage said something in a letter or said
25 something to the newspaper, and then the newspaper

1 publishes an article. So I've got three levels of
2 hearsay, none of which say exactly what my client said.
3 So let's go through the allegations here.

4 Paragraph 29 is the first allegation for the
5 conduct as to what my client supposedly stated. And it
6 says -- talking about the article that was in the Loose
7 Lips column. And, Your Honor, I actually have the
8 article, and I've attached it. I have another copy if
9 Your Honor would like to see it to make it easy.

10 THE COURT: Pass it up. Thank you.

11 MR. HORVATH: This chair doesn't slide anymore.
12 It's missing all the slide things.

13 Here's a copy.

14 So this is the article that they say --
15 paragraph 29 says: "This article also stated that Compass
16 had told Turnage." That's what they claim the article
17 says. The article does not state that.

18 I actually called counsel and said, do you want
19 to amend your allegations? No. It says: "Turnage said
20 he received an allegation" -- doesn't say who he received
21 it from, where he received it from. It's the third
22 paragraph down -- "that Campbell was trying to steer
23 another contractor, Compass Consulting, towards a
24 different potential partner, Cedric Simon. It doesn't say
25 anything my client said. It doesn't say -- and the

1 article doesn't say that either. So that's paragraph 29.
2 That's the first allegation that we have against my client
3 here.

4 The second allegation that relates to something
5 that my client stated is paragraph 35. It says: "The
6 letter also stated Compass's statements against the
7 plaintiff." Now, again, we don't have that letter. That
8 letter says: "Mr. Turnage met with the" --

9 THE COURT: This is paragraph 39, you said?

10 MR. HORVATH: 35.

11 THE COURT: 35. Okay.

12 MR. HORVATH: "Mr. Turnage met with the owner of
13 Compass. The owner of Compass reported that you
14 approached him and made it very clear which employees in
15 his organization should continue to have a job. Shortly
16 thereafter, Compass noticed their payments from DHCF for
17 services rendered began to be delayed."

18 Now let's deal with that statement. First of
19 all, again, we don't have what my client said. We don't
20 have that letter here. Second, they don't have any
21 statement that -- from Mr. Turnage that he was told this.
22 The only thing we have is this -- these allegations.

23 There's no dispute that the payments were
24 delayed. If you look at the complaint, they said there
25 was a problem with the delay of payments, that payments

1 were delayed. There was just -- they claim it was not
2 linked to any conduct involving this particular matter.
3 But they state that in there, and there's actually
4 discussions in the complaint about the efforts to try to
5 free up the payments and look into what happened. There's
6 no question the payments were delayed.

7 The other thing is on the organization as to who
8 she remembers. If you look at the allegations in the
9 complaint, the plaintiff admits this. She states in a
10 complaint that there was a meeting -- at the kick-off
11 meeting, there was a -- the statement -- let me get the
12 exact words. She said that she held up the chart and said
13 that no one -- I apologize. I just lost my spot on it.

14 Yeah. She says in paragraph 20: "During this
15 meeting, the plaintiff is CA in District for over three
16 years, made note that any deviations from the final
17 proposal, including staffing, the contract or the work
18 plan, must be approved by the CA." So you can't change
19 the staff that's in this document. She admits that she
20 says that.

21 And you go to paragraph 35 and it says: "Made
22 it very clear what employees in the chart should continue
23 to have a job." It's the same thing. But my client has
24 put in the affidavit what he said. He said that the
25 organizational chart was shown, and she said, you cannot

1 make any changes to this.

2 If -- she has a dispute as to whether she
3 actually held it up. The allegations are that she told
4 him that. Whether she held it up or didn't hold it up is
5 not defamatory. It's a true fact. It's been part of this
6 case that she said you can't change the staff without
7 approval. Okay. So that's the second allegation against
8 my client.

9 Again, you still do not have what my client
10 supposedly said in that meeting, which was defamatory.

11 The third allegation that accuses my client of
12 anything is that Compass also accused the plaintiff of a
13 lengthy pattern of unethical behavior, including
14 allegations of minority vendors in an effort to put
15 together a team that would submit a bid as prime
16 contractor for health insurance exchange. Compass
17 indicated that Compass and CGI were considering a
18 partnership until CGI called and informed Compass they
19 would not be permitted -- not be partnering with CGI
20 pursuant to instructions received by you.

21 Now, there's a couple things here. First of
22 all, we don't know who -- when the statement was made, who
23 made the statement, or to whom it was made. I have none
24 of that information here. We don't have that information
25 in their affidavits. And the only thing we have is an

1 affidavit from my client saying that statement is not
2 true.

3 So the prima facie -- so the likely to succeed
4 standard, they don't have any evidence of this. They
5 don't have any evidence that this statement was made. And
6 that's what they should have done. And the whole purpose
7 of this is, once we file this motion, they're going to
8 assemble their evidence; they're going to say I've got
9 so-and-so making this statement to you on this date; I've
10 got so-and-so making this statement to you on this date.
11 And we don't have any of that here.

12 So, under those circumstances, we think -- I
13 submit, Your Honor, there is no claim. There's no claim
14 for defamation, there's no claim for defamation, per se,
15 there's no evidence of an intentional interference with
16 contractual relationship. You've got nothing on that.
17 Absolutely nothing.

18 There is a meeting that occurred, and that's all
19 we have. They don't make any of the allegations as to who
20 said something that we interfered with it. And they also
21 make a claim for intentional infliction of emotional
22 distress, which is, as Your Honor's aware, extreme and
23 outrageous conduct that no reasonable person can tolerate
24 which offends society -- the decency of society. And the
25 Court's going to say that's outrageous -- that causes

1 extreme emotional distress.

2 THE COURT: Right. I understand. The standard
3 is -- the hurdle is very high there.

4 MR. HORVATH: And the courts also say that it's
5 for the Court to decide in the first instance whether or
6 not the behavior is outrageous, and the only thing we have
7 here is a meeting. That's it.

8 So I would submit, Your Honor, that the
9 plaintiff has not made a likelihood of success. They
10 don't have any evidence. You know, I look at it to say,
11 would this survive a Rule 55 motion for judgment as a
12 matter of law? I would submit they have nothing offered.
13 They don't have the statements as to who made the
14 statements and when they made it or what was said. We
15 wouldn't even get to that stage, let alone showing that
16 they're likely to succeed, especially when I have the
17 evidence to the contrary that these statements did not
18 occur.

19 THE COURT: Understood.

20 MR. HORVATH: Thank you, Your Honor.

21 THE COURT: Thank you.

22 Mr. Lescht, let me start by asking, what did the
23 defendants say that was defamatory? What were the
24 specific words he used and when and where and so on?

25 MR. LESCHT: The defendant met with Mr. Turnage

1 and reported that my client made it clear that she was not
2 going to pay this -- Compass's invoices unless Compass did
3 exactly as she wanted by keeping a person working on the
4 contract. That statement is untrue, and we have
5 affidavits from both Ms. Campbell and Cedric Simon stating
6 that she didn't make that statement.

7 THE COURT: So the defendant met with Turnage
8 and told Turnage that the plaintiff told him that -- what?

9 MR. LESCHT: That Mr. Onyewuchi met with
10 Mr. Turnage --

11 THE COURT: Right.

12 MR. LESCHT: -- and made false statements about
13 my client.

14 THE COURT: Right. Understood.

15 MR. LESCHT: So my client was holding up
16 payments of his invoices because my client insisted that
17 he continue to employ someone on the contract.

18 Ms. Campbell, my client, disputes that
19 statement. Mr. Simon put it in an affidavit disputing
20 that that statement was made.

21 The other statement that Compass made is that
22 they told Turnage that Ms. Campbell was trying to steer
23 another contractor towards a different potential partner,
24 and that they accused my client of engaging in unethical
25 behavior. And the allegations as to why my client was

1 fired are laid out in the complaint and any affidavits of
2 Ms. Campbell. And to the extent that the -- we quoted
3 from the termination letter, we've quoted from it -- we
4 could submit it when we get back and supplement it. But
5 the termination letter is quoted in detail. A defamation
6 case, by its very essence, is proven by hearsay. So
7 that's how it's made.

8 Now, I think it's important, though, to start
9 this discussion here today to take a look at what we're
10 dealing with here. We're talking about the SLAPP Act.

11 THE COURT: I understand. Before we turn to
12 that, the -- your position is that Turnage would back up
13 everything you said?

14 MR. LESCHT: Turnage --

15 THE COURT: He would -- Turnage would agree that
16 the defendant said these things to him?

17 MR. LESCHT: Yeah. Turnage sent a termination
18 letter to my client. These allegations that are in the
19 complaint come straight out of the termination letter.

20 I mean, Turnage fired Ms. Campbell based upon
21 the false statements made by Compass and by CGI. We could
22 submit that letter. I thought it was submitted. We filed
23 16 filings in these cases. I thought it was included. We
24 could submit it. There's no question about it.

25 THE COURT: Please do. Please submit it by the

1 end of the week. By the end of the week.

2 MR. LESCHT: Right. We'll submit it when we get
3 back.

4 THE COURT: By the end of the week.

5 Let me move off -- hit one point here before you
6 move back to the anti-SLAPP Act.

7 Outrageous, though?

8 MR. LESCHT: What's that?

9 THE COURT: Intentional infliction of emotional
10 distress. Does that potentially rise to that level? Is
11 this case really about that?

12 MR. LESCHT: Let me put it in context. Okay.

13 THE COURT: If something was said, best case
14 scenario for you, defamatory, she lost her job, but is
15 that the same as outrageous conduct?

16 MR. LESCHT: Compass wants to do business with
17 the District. They see my client as an impediment to
18 doing business with the District. This exchange contract
19 is roughly \$100 million in business. This is a huge
20 contract. My client is giving Compass a hard time. My
21 client is giving CGI a hard time because she's insisting
22 on them complying with the District of Columbia
23 regulations.

24 What they do is make an inrun and go and make
25 false statements about her to cause her to be removed, to

1 be fired, so they can continue doing business. In my
2 experience in employment law, that's outrageous for
3 someone to go around the person they're supposed to be
4 dealing with, make up false statements, cause that person
5 to be fired.

6 The result for Ms. Campbell right now -- she was
7 making about \$150,000 a year, had a great pension and
8 benefits. She's radioactive. She can't get a job. She's
9 penniless. She can barely afford to forward any of the
10 costs of this case. I'm not talking about attorney's
11 fees. She is penniless, and she's been rendered penniless
12 and radioactive from other employment because of what
13 these people -- these companies have done.

14 THE COURT: Understood.

15 MR. LESCHT: I mean, this whole SLAPP Act and
16 the notion that this applies in this case is like turning
17 the world upside down.

18 THE COURT: Let's move right to that.

19 MR. LESCHT: Yeah. Because this law is meant to
20 stop very rich people from stifling public discussion.

21 I mean, in this case, Compass employs some ten
22 people. You look at their websites, they've got contracts
23 with all sorts of Fortune 500 companies and government
24 agencies, they've won all sorts of awards. CGI employs
25 71,000 people in 40 countries. And here we've got

1 Jennifer Campbell, who's out of work, broke, hires me to
2 bring a wrongful termination case, and, in this case, a
3 defamation case, and all we're dealing with here is a
4 commercial case.

5 You know, Compass was upset because their
6 invoices weren't being paid, and they were upset because
7 my client was standing in their way of doing business and
8 possibly joining in to one of the largest contracts that
9 the District will ever lay, this Obama Exchange.

10 My client was in the way. And what do they do?
11 They go to her boss and make up a story about her to get
12 her fired, and they succeeded. CGI and Compass succeeded.
13 This is not a SLAPP Act. My client has no economic
14 wherewithal. She has no money. And this is not speaking
15 out politically. These people are doing this to line
16 their own pockets. They want the payment of the invoices.

17 THE COURT: And that's what you interpret the
18 anti-SLAPP Act to be?

19 MR. LESCHT: Yeah.

20 THE COURT: It has to do with political --

21 MR. LESCHT: Well, political --

22 THE COURT: -- speech?

23 MR. LESCHT: Look, they didn't go to the
24 Inspector General's office. They didn't go to the police
25 department. They didn't go to the FBI. They didn't go

1 anywhere that you would go to complain about unethical
2 behavior. They ran on a weekend -- I mean, what
3 government official is working on a weekend? And who's
4 doing this on a weekend and complaining about my client
5 not paying their invoices? This is purely commercial.

6 And we've cited case law from the other
7 jurisdictions where the SLAPP Act has, you know, existed
8 for longer than the District to show that in these types
9 of situations, this is not what the SLAPP Act was
10 intended. This is not Daniel Snyder suing the city paper,
11 you know. This is not, you know, some rich person trying
12 to squash public descent. This is a person who was fired
13 as a result of allegedly defamatory statements because of
14 a purely commercial nature. This SLAPP Act does not
15 apply. This would be turning the statue upside down if it
16 were to apply. This had to do with Compass wanting its
17 invoices paid. Nothing more and nothing less.

18 THE COURT: All right. So let's focus right
19 into the language of the SLAPP Act then.

20 Of course opposing counsel has talked about an
21 act in furtherance of the right of advocacy on the issues
22 of public interest. And you've just spoken generally
23 about what that means. But an issue under consideration
24 or review by a legislative executive or judicial body.

25 MR. LESCHT: I don't think any of that applies.

1 There's not a public interest. This has to do -- is there
2 a public interest in Compass getting paid its invoices?

3 THE COURT: Is there an issue under
4 consideration?

5 MR. LESCHT: No.

6 THE COURT: Counsel says -- well, the issue
7 under consideration is this broad concern was steering
8 contracts and how contracts are being let and executives
9 always looking at that and only should be looking at that.

10 MR. LESCHT: If you look at Compass's affidavit,
11 he contacted Turnage because he was upset his invoices
12 weren't being paid promptly. Now, whose interest is that?
13 Is that in the public's interest that Compass get paid
14 invoices faster than the District government should get
15 paid? No. It's one person's interest. It's in Compass's
16 interest. That's a private interest. This is not some
17 kind of public interest where, like, you know, a District
18 counsel is taking testimony as to what's going on.
19 Compass went in there complaining about its own purely
20 private interest in this matter.

21 THE COURT: And you can't -- your position is
22 you can't extrapolate that into yes, but the Government
23 has an overarching concern with the way contracts are
24 being let and making sure things are done properly and so
25 on?

1 MR. LESCHT: I don't see it.

2 THE COURT: Let me switch back to the defense.

3 Why should I extrapolate that way? I mean,
4 this -- what initiated this was purely private; right?

5 MR. HORVATH: Your Honor --

6 THE COURT: I mean, your client didn't contact
7 them because of some concern about the way the Government
8 was working and things weren't working properly and he has
9 a political interest in systemic reform or something like
10 that; right? He contacted them because of his own
11 personal situation?

12 MR. HORVATH: There's no evidence of that. No
13 evidence that that was why -- counsel has stated that
14 repeatedly in papers and other things.

15 THE COURT: No. No. No. I'm just asking the
16 question. I'm not making that finding.

17 MR. HORVATH: Sure.

18 THE COURT: But what evidence do you have that
19 there was some general concern with the way contracts were
20 being let in the District?

21 MR. HORVATH: Sure. You read my client's
22 affidavit --

23 THE COURT: Yes.

24 MR. HORVATH: -- and he says: "Because of my
25 concerns about the conduct of Ms. Brooks-Browns and

1 Mr. Simon and the treatment Compass had received from
2 DHCF, I contacted Wayne Turnage, the director" --

3 THE COURT: Okay. Stop -- stop right there.

4 Sure, he's concerned with the way they were
5 acting and the effect it had on Compass. And that's the
6 same thing Mr. Lescht was saying. This private interest,
7 commercial interest was being compromised by their
8 conduct, so he complained. But the affidavit -- what you
9 just read doesn't indicate that your client was concerned
10 on a level about the way the Government was functioning.
11 It had some -- some issues with that. It was his own --
12 it was his own position; right?

13 MR. HORVATH: Paragraph 16 and paragraph 19. "I
14 reported the foregoing to Turnage because of my concerns
15 of what to be irregularities in the way this department
16 was handling Compass Solutions' existing contracts." So
17 the way they're handling the contracts. And the question
18 is --

19 THE COURT: No. No. No. The way they're
20 handling his contracts?

21 MR. HORVATH: Absolutely. That's one of the
22 things he's looking at. Absolutely.

23 THE COURT: The only thing he's looking at.

24 MR. HORVATH: Well, he also was concerned about
25 what happened with the issue beforehand with people coming

1 to him and saying they have a client, people coming to him
2 and saying that people need to work for him. People
3 coming to him and then he makes a stink and all of a
4 sudden his bills aren't being paid. That's a much broader
5 concern. And the question then comes in, what is a
6 private interest, and have they met their burden on that
7 exclusion. And the case that we cited of *Simpson*
8 *Strong-Tie Company v Gore* I think is very instructive on
9 this case.

10 In this case, if you look at it, what happened
11 was there was an attorney that sent out an ad that said if
12 you have decks built with these screws, contact me because
13 I have a lawsuit -- we could file a lawsuit on it because
14 they're potentially dangerous.

15 Clearly he's out there trying to get business
16 for the attorney. Clearly it's an advertisement for him.
17 Clearly that's what his goal, you would think, would be.

18 The Supreme Court said, look, if you start
19 making that narrow exception to it, if you make it that
20 narrow, everything probably has some personal reason for
21 anything you do --

22 THE COURT: Sure.

23 MR. HORVATH: -- and it has to be the primary
24 reason.

25 And the Court said, this is what we're going to

1 look at. This is the test. The cause of action is
2 against the person primarily engaged in the business of
3 selling or leasing goods. The cause of action arises from
4 the statement and conduct the person consisting of
5 representations of fact by the person's or business's,
6 competitor's business operations, goods or services.
7 Otherwise, you're making comments about your competitor,
8 not your own. That's not what we're dealing with here.

9 The other thing it says is the statement or
10 conduct was made either for the purpose of obtaining
11 approval for, promoting or securing the sales of persons,
12 goods or services. We don't have that here. We're not
13 promoting, we're not selling, we're not trying to obtain a
14 contract, we already have a contract. We're concerned
15 about what led up to that contract. That's why it's so
16 different.

17 If he was there to say, hey, this is a sales
18 call, I want to market my product, that will be something
19 different. But he already has a contract, and under the
20 standards set forth by California, which I think is a very
21 well-reasoned standard -- if you look at the decision,
22 people do an extensive analysis of it. And also the
23 audience of the person has to be the one who makes the
24 ultimate decision to buy it. And there's no indication
25 that Turnage had the power to even let a contract for a

1 contract that was already let.

2 So under that definition, it does not fall
3 within the primary for personal commercial gains. It
4 doesn't fall within that category. And so I would submit
5 that it is -- they have not met their burden of showing
6 that this was the primary for that purpose, and that's
7 their burden to show all four of those elements today.
8 They've not even shown one of those elements.

9 THE COURT: Mr. Lescht.

10 MR. LESCHT: Yeah. I would just add one simple
11 thing.

12 If Compass's invoices had been paid timely,
13 there's no meeting with Turnage. The only reason he meant
14 with him is because he didn't think he was being paid fast
15 enough. This case has nothing to do with a SLAPP Act,
16 nothing to do with anything having to do with public
17 information. It has everything to do with one company's
18 interest and its own bottom line and removing my client as
19 an impediment from that bottom line. That's it.

20 THE COURT: I'm not going to rule on this now,
21 of course. But if I were to agree with you on that,
22 Mr. Lescht, that doesn't mean that -- that would not mean,
23 of course, that the defense that's before me here is not a
24 strong defense to these allegations.

25 I mean, what -- everything that you're saying is

1 the reason to deny the motion to dismiss under the
2 anti-SLAPP Act, the fact that this was -- this was -- he
3 was focused on Compass's interest and it was related to a
4 contract and concerns about that and so on. It can also
5 provide some support for the defense that this was just a
6 legitimate conversation, concerns were expressed, and how
7 can that be defamatory. I mean, that's what going to be
8 coming at you.

9 So, I mean, the -- I mean, clearly we're not
10 in -- we will not be in the realm here of any serious
11 motion for summary judgment, let's say, or the like, for
12 either side, I don't think. I'm just flagging that for
13 you. I don't want you to waste your time. I mean, you
14 can file anything you want, but there's some genuine
15 defenses here, no doubt.

16 MR. HORVATH: I understand.

17 THE COURT: And I say that not minimizing the
18 effect of what happened on the plaintiff, but I want the
19 parties to understand how this appears in some respects at
20 this point without making any rulings or findings.

21 MR. HORVATH: Your Honor, if I could respond to
22 his other points. I just thought I was -- I responded to
23 one issue.

24 THE COURT: Well, he -- I mean, you already laid
25 out everything, I think, but you can respond.

1 Mr. Lescht, did you have anything else you
2 wanted to argue?

3 MR. LESCHT: No. I just reiterate what I said.

4 THE COURT: I know. I got it. Okay.

5 MR. LESCHT: Yeah, there's nothing new.

6 MR. HORVATH: Your Honor, you asked him
7 specifically what were the false and defamatory statements
8 that were made, and I wrote them down.

9 THE COURT: You laid it all out.

10 MR. HORVATH: The first one is that my client
11 told Turnage that they were holding out payments in order
12 to force him to hire someone.

13 THE COURT: Right.

14 MR. HORVATH: That's what he said. First of
15 all, that's not in a complaint. It's not in there.

16 Second, there's no evidence of that. We don't
17 have a statement from Turnage that's -- to that effect.

18 And by the way, Your Honor, their opposition --

19 THE COURT: He said it's in the letter.

20 MR. HORVATH: Yeah. Well, this is -- what's
21 really fascinating to me is the fact that they filed suit
22 against Turnage claiming that Turnage was conspiring with
23 other people for other reasons to get rid of her, and
24 that's pending in Federal Court right now, and they've
25 taken a completely different position in Federal Court as

1 to what Turnage did and did not do. They've attached the
2 complaint, but it's just amazing how it's flip-flopped.
3 Now we're the ones, and they're in Federal Court, and he's
4 the one. But they don't have any evidence that that
5 statement was made to Turnage or that was the statement.

6 The second one was that my client said to
7 Turnage that there was an effort to steer another
8 contractor. Again, we don't have that statement anyplace.
9 There's no evidence of that statement anywhere in this
10 record to say this is what was said.

11 And the third thing is, he said my client said
12 that the plaintiff had engaged in unethical behavior.
13 And, again, there's no evidence of that. Counsel seems to
14 think that this is a 12(b)(6) motion. It is not. This is
15 his opportunity to put on a case that is likely to proceed
16 and win.

17 THE COURT: If the anti-SLAPP Act applies at
18 all.

19 MR. HORVATH: If the anti-SLAPP Act applies.

20 THE COURT: Right.

21 MR. HORVATH: And I would submit, Your Honor,
22 that they have not done anything.

23 It's my understanding typically in these cases
24 you can call witnesses. I was prepared to call my client
25 if they called their client. They've chosen not to do

1 that. They don't have any evidence of these issues here.

2 THE COURT: Let me turn back to Mr. Lescht on
3 this, because this -- obviously this is an important part
4 of the argument.

5 The defendant met with Turnage and said -- the
6 allegation is that the defendant met with Turnage and said
7 that -- that said what, that she employed someone else?

8 MR. LESCHT: Well, there are several
9 allegations.

10 THE COURT: Right.

11 MR. LESCHT: And the --

12 THE COURT: But the defense argument is -- I'm
13 sorry -- it's not in the complaint, there's no evidence
14 that this statement was even made to Turnage.

15 MR. LESCHT: That's not true. It is -- there's
16 the allegation that Turnage met with the owner of Compass
17 and reported that my client approached him and made it
18 very clear which employees in his organization should
19 continue to have a job. Shortly thereafter, Compass noted
20 their payments from DHC after services rendered began to
21 be delayed.

22 THE COURT: Where are you reading from?

23 MR. LESCHT: I'm reading from Allegation 35 of
24 the complaint.

25 THE COURT: Okay.

1 MR. LESCHT: 37, Compass also accused plaintiff
2 of a lengthy pattern of unethical behavior, including
3 allegations of minority vendors in an effort to put
4 together a team that would submit a bid --

5 THE COURT: Well, on that point, counsel doesn't
6 argue it's not in the complaint --

7 MR. LESCHT: Oh, I thought he said it wasn't.

8 THE COURT: -- accused the plaintiff of
9 unethical behavior; he argues that there's no evidence to
10 back it up.

11 MR. LESCHT: Well --

12 THE COURT: So where's the evidence to back it
13 up?

14 MR. LESCHT: Yeah. The evidence is that -- what
15 I'm reading from is the termination letter, right. This
16 is the --

17 THE COURT: This is the letter you haven't seen
18 yet?

19 MR. HORVATH: That no one has seen, Your Honor.
20 I'm surprised -- and if he submits it, I may need to do an
21 affidavit in response to it because it's hearsay. I'm not
22 even admitting that it's admissible into evidence to show.

23 THE COURT: Surely I can consider it at this
24 point at this stage in the proceeding; no?

25 MR. HORVATH: Is it likely to prevail? I think

1 likely to prevail needs some admissible evidence, not some
2 theory that it's something that said something.

3 THE COURT: Well, it's a letter that he's
4 sponsoring as being the termination letter.

5 MR. HORVATH: Right.

6 THE COURT: This letter was sent to the
7 plaintiff?

8 MR. LESCHT: That's right. And it's quoted in
9 detail --

10 THE COURT: You don't have the letter?

11 MR. HORVATH: I've never seen the letter. I
12 mean, that came as a complete shock to me when we finished
13 all of our briefing on this thing, no one bothers to give
14 me the letter. He never requested leave to take the
15 deposition of Turnage, which you can do under the statute.
16 We're here at a hearing on this thing on the merits, and
17 now he says, well, I've got some document out there. It
18 kinds of reminds of Nixon and the Great Pumpkin. I've got
19 some letters out here someplace that says something.

20 THE COURT: Maybe not that bad.

21 But the fact is that if -- I want this process
22 to be fair, and so you'll get the letter this week.

23 MR. LESCHT: Yeah. We'll submit it to you.
24 It's been quoted in detail in our memorandum and in our
25 complaint. It's quoted in detail in this Loose Lips

1 article and in the Washington Post article. And the fact
2 is is that we did send out discovery and we're going to
3 exchange discovery with them and he refused to engage in
4 discovery. This is Mr. Horvath.

5 So we believe firmly that Your Honor should rule
6 that the SLAPP Act does not apply. It would be turning
7 this law on its head to apply in a case of Ms. Campbell.

8 THE COURT: I get it. I understand.

9 MR. LESCHT: And, further, we believe that we've
10 established the facts that would show that it's likely we
11 would prevail in a defamation case.

12 And I understand what Your Honor said earlier
13 about there being defenses. You know, I understand the
14 issues in the case. But we don't think at this stage of
15 the game that Your Honor should rule upon the SLAPP Act
16 and find that this applies in this case, because it just
17 simply does not. And you should follow -- I believe we
18 submitted supplemental briefing -- Judge Rankin did, and
19 this is just not a type of a case that this would apply
20 to.

21 THE COURT: Of course I'll consider what Judge
22 Rankin decided, but as you know and I know, it's not
23 controlling.

24 MR. LESCHT: Right.

25 THE COURT: Well --

1 MR. HORVATH: Your Honor, depending on what they
2 submit in this letter once I finally see it after all
3 these months --

4 THE COURT: You can supplement it.

5 MR. HORVATH: -- I may need to supplement. I
6 may not. It may be --

7 THE COURT: Let's do this, because I'd like to
8 rule on this promptly.

9 You said by the end of the day you can get the
10 copy to them?

11 MR. LESCHT: Yeah. We'll get back, scan it,
12 send if off, file it.

13 THE COURT: Send it to them and a copy to me by
14 email --

15 MR. LESCHT: Will do. Sure.

16 THE COURT: -- by the end of the day and to
17 opposing counsel -- both counsel. And then let me know by
18 the end of the week if you need to supplement, that way
19 I'll anticipate what's coming.

20 MR. HORVATH: I'll be happy to do that, Your
21 Honor.

22 THE COURT: Good. Good. It's been helpful to
23 hear from you both.

24 MR. HORVATH: Thank you, Your Honor.

25 THE COURT: And the -- it's not lost on me that

1 there are additional motions to dismiss that are pending,
2 which will also be ruled on promptly. Thank you.

3 MR. LESCHT: All right. Thank you.

4 MR. HORVATH: All right.

5 THE COURT: All right. Have the parties -- have
6 the parties considered early mediation, private mediation,
7 anything along those lines?

8 MR. LESCHT: We really haven't had any
9 discussions other than --

10 THE COURT: Want to wait to see what happens to
11 the motions to dismiss and then think about that?

12 MR. HORVATH: I've never even had a demand.

13 THE COURT: Let me just check something.

14 Well, I'll say this, and it's my practice if we
15 reach this point many months from now where there's a
16 pretrial, the focus of the pretrial will be on settlement.
17 And my view is why not get me involved a lot earlier than
18 that, if it would be helpful. Of course you can go other
19 routes. You'll need to go through the Court's mediation
20 at some point probably, but private mediation is an
21 option. If you reach a point where you think it will be
22 helpful to take half a day or a day with me, I'll block
23 off the time. Just contact chambers. All right.

24 MR. LESCHT: All right. Thank you.

25 MR. HORVATH: Thank you, Your Honor.

(Proceedings adjourned.)

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CERTIFICATE OF REPORTER

I, Stephanie M. Austin, RPR, CRR, an Official Court Reporter for the Superior Court of the District of Columbia, do hereby certify that I reported, by machine shorthand from the sound recording, the proceedings had and testimony adduced upon the motions hearing in the case of the JENNIFER B. CAMPBELL versus CGI GROUP, INC., ET AL., Civil Action Number 2012 CAB 8217, in said court on the 20th day of February, 2013.

I further certify that the foregoing 38 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, together with the backup tape of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this 5th day of May, 2020.

Stephanie Austin

Stephanie M. Austin, RPR, CRR
Official Court Reporter