

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/21/07

DEPT. WEC

HONORABLE JOSEPH S. BIDERMAN

JUDGE

K. SANDOVAL

DEPUTY CLERK

HONORABLE
#6

JUDGE PRO TEM

T. MEDINA, CSL/CT. ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

P. HODGKINS CSR #8942

Reporter

8:32 am

SC092103

Plaintiff
Counsel

ALBERT WU

(X)

JOHN DOE 3

VS

Defendant

WALT SADLER

(X)

ONE AMERICA PRODUCTIONS, INC. ET
AL.

Counsel

NATURE OF PROCEEDINGS:

K. Sandoval

OLIVIER A. TAILLIEU, ESQ.
ZUBER & TAILLIEU, LLP
10866 WILSHIRE BLVD.
STE. 300
LOS ANGELES, CA 90024

WALTER R. SADLER, ESQ.
LEOPOLOD, PETRICH & SMITH, P.C.
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SUITE 3110
LOS ANGELES, CA 90067-3274

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NATURE OF PROCEEDINGS:

DEFENDANTS' (TWENTIETH CENTURY FOX FILMS CORPORATION;
ONE AMERICA PRODUCTIONS, INC.; AND EVERYMAN PICTURES)
SPECIAL MOTION TO STRIKE PLAINTIFF'S COMPLAINT;

STATUS CONFERENCE;

Matters are called for hearing.

A copy of Tentative Ruling is provided to counsel.

Counsel argue and submit.

Tentative Ruling becomes the Order of the Court as follows:

SPECIAL MOTION TO STRIKE

Evidentiary Objections

- Paragraph 9 - Overruled
- Paragraph 11 - Overruled
- Paragraph 12 - Sustained - lack of foundation, hearsay
- Paragraph 13 - Sustained - lackof foundation, hearsay
- Paragraph 14 - Sustained as to the underlined testimony to the extent it is offered for a legal conclusion.

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NATURE OF PROCEEDINGS:

Merits

While the facts at bar may differ (in an immaterial manner), the issues in this action are nearly identical to those considered at length by the Court in the related action, SC091723, and counsel on both sides of this action previously litigated the related action. Counsel are both familiar with Court's previous rulings on these issues. Accordingly, the Court will not repeat points made at the 2/14/07 hearing on the anti-SLAPP motion in the related action, points raised in its 2/15/07 Ruling on Submitted Matter regarding that anti-SLAPP motion, or points it made at the 3/22/07 hearing on the SC091723 Plaintiffs' unsuccessful motion for reconsideration of the aforementioned 2/15/07 ruling.

While Defendants' arguments concerning "biker gangs" and "biker culture" stretches their point a bit too far (these themes are not addressed in the movie), Defendants have satisfied their initial burden under CCP 425.16. In this regard, the Court notes that Plaintiff's argument that he "makes no statements at all in the movie" (Opp. at 5:14-15), and thus Defendants cannot satisfy their burden on the first CCP 425.16 prong, lacks persuasive force, for two independent reasons.

First, in determining whether a moving defendant has carried its burden on the first prong

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of the anti-SLAPP statute, the question is whether the plaintiff's claims are based on an act in furtherance of the defendant's exercise of free speech rights, i.e., the focus is on the defendant's speech activity (or petitioning activity). There is no requirement that the plaintiff have engaged in speech activity.

Second, in any event, the Plaintiff did make a "statement." Clothing may constitute speech (particularly when it bears printed language). E.g., Cohen v. California, 403 U.S. 15, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971) (shirt bearing message derogatory of the military draft held to be protected political speech). The movie depicts Plaintiff wearing a cap with a clearly visible Confederate flag thereon. According to the Eleventh Circuit, "[i]t is ... clear that the primary effect of the [Confederate] flag ... is to remind citizens, albeit offensively to some, of a controversial era in American history." NAACP v. Hunt, 891 F.2d 1555, 1564 (11th Cir.1990). See also Briggs v. State of Mississippi, 331 F.3d 499, 506 (5th Cir.2003). Thus, the movie makes its own statement about issues engendered by display of the Confederate flag through Plaintiff's own statement, specifically, his public display of the flag.

Plaintiff has asserted two claims, one for common law misappropriation of likeness, and one for "statutory false light" (which is actually a claim

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based on the statutory right of publicity [CC 3344]). For the reasons set forth at 6-7 of the 2/15/07 Ruling on Submitted Matter, concerning the identical claims asserted by the Plaintiffs in the related action, Plaintiff has failed to establish a probability he will prevail on either of these claims at trial.

Defendants' request for judicial notice is denied in all respects, with the sole exception of Item 3 at 2:5-11 thereof. Motion is granted in full. The Court will execute the proposed order and proposed judgment lodged on 4/6/07 [the Court will interlineate "CCP 425.16" on line 17 of the proposed order].

Any request for attorney's fees pursuant to CCP 425.16(c) may be made by separate motion supported by admissible evidence showing in detail the amount of reasonable time spent on the motion to strike and the fees motion.

WHEREFORE, by virtue of law, and by reason of the premises aforesaid, IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff John Doe 3 shall take nothing by way of their Complaint against the Defendants, that the Plaintiff's Complaint be dismissed with prejudice and that the Defendants and their attorneys Leopold, Petrich & Smith shall have and recover from Plaintiff John Doe 3 their costs and disbursements as provided for by statute.

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DATED: June 21, 2007

Joseph Shiro Biderman

SIGNED:

Joseph S. Biderman
Judge of Superior Court

Clerk to give notice. Counsel for plaintiff to promptly notice remaining parties, if applicable.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 6-21-07 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: June 21, 2007

John A. Clarke, Executive Officer/Clerk

By: _____

J. A. CLARKE

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