

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

LU NING,	:	
<i>Plaintiff,</i>	:	
v.	:	Civil Action No.: 3:23-cv-00395
MICHAEL ZYDA & 411 PRODUCTIONS	:	
DTLA, LLC,	:	
<i>Defendants.</i>	:	January 23, 2024

**LU NING’S REPLY IN SUPPORT OF HER
MOTION TO DISMISS MICHAEL ZYDA’S COUNTERCLAIMS
UNDER CONNECTICUT GENERAL STATUTES SECTION 52-196a**

INTRODUCTION

Michael Zyda’s opposition, ECF No. 22, presents no evidence to support his defamation claim. Instead, it argues that Mr. Zyda is not a public figure, that Ms. Ning’s commentary on his abusive modern-day slavery is not protected speech, and that more discovery “seems likely” to provide him with proof that Ms. Ning has lied. Mr. Zyda’s opposition, in other words, confirms his claim is a SLAPP without basis in law or in fact. Connecticut’s anti-SLAPP law, Connecticut General Statutes § 52-196a, protects victims like Ms. Ning from SLAPP suits like Mr. Zyda’s and provides them with a claim for attorney’s fees. Mr. Zyda’s counterclaims should therefore be dismissed under § 52-196a, and Ms. Ning should be awarded attorney’s fees *pendente lite*, for being forced to oppose a nonviable claim that infringes upon her constitutional rights as a matter of Connecticut state law.

I. Mr. Zyda Fails to Present Any Evidence of Defamation

After reciting the allegations of his counterclaims, ECF No. 22 at 2, Mr. Zyda says “Ning has provided substantial evidence . . . that she has made grossly false and defamatory statements about Zyda to individuals outside of litigation . . .” *Id.* at 3. But no evidence is cited. To support this claim, Mr. Zyda points to the fact that Ms. Ning has responded, truthfully

in interrogatory responses, that she has discussed this case with over fifty individuals. *Id.* That provides no evidence that anything Ms. Ning has said about this case to any of these individuals is “grossly false and defamatory.” That fifty individuals have been contacted and Mr. Zyda has no evidence that Ms. Ning defamed him to any of them is further proof Mr. Zyda has no likelihood of success here. He only seeks to punish and silence Ms. Ning.

Mr. Zyda points to an email Ms. Ning sent to the University of Southern California’s Title IX office. *Id.* But this is not evidence that anything Ms. Ning told USC was false or defamatory. And Ms. Ning’s inquiry for assistance with a Title IX claim is exactly the type of speech on a matter of public concern that Connecticut’s anti-SLAPP law was meant to protect.

Mr. Zyda then says that “Ning’s . . . descriptions of . . . events . . . demonstrate that she is inclined to substantial exaggeration and harmful hyperbole.” *Id.* Even if “substantial exaggeration and harmful hyperbole” was defamation, Mr. Zyda provides no evidence to support this one-sided assertion. The examples Mr. Zyda gives are not defamation. Mr. Zyda presents no evidence that any of the statements are defamation.

Mr. Zyda then says “it is likely that further discovery will demonstrate additional evidence to support Zyda’s claim” *Id.* No evidence is provided to support this prediction, which is speculative at best. This cavalier attitude toward the proof of Mr. Zyda’s claim is exactly the type of phishing expedition that Connecticut General Statutes § 52-196a was intended to eliminate. Here a claimant baselessly alleges defamation without evidence to prove it and then speculates that the costly process of discovery and litigation will produce evidence to support the claim. That places the cart before the horse when it comes to legal claims that implicate constitutional free speech rights, at least under Connecticut law. It is also so highly speculative this Court should reject the prediction—Mr. Zyda provides no substantiation for his

assertion that “it is likely that further discovery will allow Zyda to uncover the extent of her defamatory crusade” *Id.* at 3-4. No description of what that “further discovery” would look like is even made.

II. Connecticut’s Anti-SLAPP Statute Applies to this SLAPP

Mr. Zyda relies heavily on *Sentementes* for its argument that Connecticut’s anti-SLAPP legislation fails to apply in federal court. But Judge Shea’s decision in *Sentementes* came before the Connecticut Supreme Court’s decision in *Smith v. Supple*, 346 Conn. 928, 935 (2023). Although Mr. Zyda calls this ruling “non-binding, non-persuasive,” ECF No. 22 at 7, it is binding as a matter of Connecticut state law on this Court. And it teaches that the benefit provided by Connecticut’s anti-SLAPP law provided to victims of SLAPP lawsuits like Ms. Ning is a “substantive benefit.” 346 Conn. at 935.

As Mr. Zyda points out, *Sentementes* was brought by a *pro se* prisoner—not a well-heeled professor who brags on his website about having “[h]is alums hav[ing] shipped games played by over 5 billion players, about \$250B in revenue and \$2.5B in payroll to those alums.” Meanwhile the defendant, Attorney Sean Wanat, was hardly an ordinary citizen easily intimidated by legal process or likely to shrink from public participation as a result. In other words, it was not a classic SLAPP like this case. Different on the law (because the law has further developed) and different on the facts, *Sentementes* is highly distinguishable and unpersuasive.

Mr. Zyda correctly observes that the Second Circuit—while addressing anti-SLAPP laws from Nevada, Vermont, and California—has never definitively addressed the Connecticut statute. ECF No. 22 at 4. Connecticut’s law has not been examined in this District since the ruling in *Supple*, which for the first time defined the anti-SLAPP law as having a “substantive

benefit.” 346 Conn. at 935. This Court should give it the correct construction and rule that it provides a substantive benefit to victims of SLAPPs like Ms. Ning.

Connecticut’s anti-SLAPP law does not answer the same question as Federal Rules of Civil Procedure 12 or 56 because it is a substantive modification of Connecticut law, especially the law of defamation. It applies only to those lawsuits that target an individual’s freedom of speech or expression on matters of public concern (like this case and the alleged defamation targeted by Mr. Zyda). It does not apply to all claims, like FRCP 12 or 56. To the extent there are procedures in the law, those procedures – like the 30-day time limitation, the necessity of a prompt hearing, and the stay of discovery – are procedures for enforcing the substantive limitation on Connecticut legal claims that it imposes. To be sure, it does address, as Judge Shea said, “whether a claim should be dismissed pre-trial,” but so would any state law that places limitations on liability along with a mechanism to accomplish that limitation. In order to provide defendants of SLAPPs with protection against litigation, a motion to dismiss must be available. That does not supplant or replace or answer the same question as Rule 12 or 56, which provide mechanisms for pre-trial disposition of all cases in federal courts regardless of their content.

Although Mr. Zyda attempts to recast Connecticut’s statute as “restricting [his] ‘procedural right to maintain an action,’” ECF No. 22 at 7, the Connecticut statute in fact alters the substantive subject matter over which actions may be maintained under Connecticut law. The anti-SLAPP law renders lawsuits, such as Mr. Zyda’s, not actionable under Connecticut law because they (1) target constitutional freedom and (2) either fail to allege the elements given available defenses or are unlikely to succeed (in this case both). Because Mr. Zyda has presented no evidence in support of his claim, because it fails to state a claim, and because it

implicates constitutional freedom, Connecticut law fails to support his claim. The forum in which the claim is brought should not be dispositive because Connecticut law, the source of liability, fails to support the claim.

Mr. Zyda’s attempt to distinguish the substantive rights provided by § 52-196a and other substantive rights to which the Supreme Court compared it in *Supple*, such as double jeopardy, collateral estoppel, *res judicata*, and absolute or sovereign immunity, misses the mark.

Mr. Zyda says “[t]hese substantive rights do not establish burdens of proof,” but in many cases they do—*res judicata* allows for a prior judgment to serve as proof. Collateral estoppel governs when certain issues are precluded from further proof. Immunity doctrines shift burdens and create rebuttable presumptions.

Moreover, Mr. Zyda makes our point for us by saying “all of these substantive rights extend explicitly from Constitutional rights,” ECF No. 22 at 8. Just so. Just as § 52-196a protects constitutional rights from infringement by litigation, so too the other doctrines.

Although Mr. Zyda attempts to distinguish the First Amendment rights protected by § 52-196a from the Fifth, Seventh, and Eleventh Amendment rights protected by double jeopardy, *res judicata*, and sovereign immunity, Mr. Zyda’s distinction – they “require[] substantial factual inquiry” is a legislative judgment, which Connecticut’s General Assembly has rejected. (It is also a false distinction because all these doctrines also occasionally require substantial factual inquiry.) Connecticut has adopted, as part of its substantive law, the principle that the protection of First Amendment rights is just as important as other rights already protected by common law doctrines. Accordingly, the rights protected by § 52-196a are substantive rights and should be applied in this Court to Mr. Zyda’s Connecticut law claim under the *Erie* analysis.

Mr. Zyda asserts that “this Statute will chill Zyda’s attempt to seek recourse and to uncover the breadth of Ning’s campaign against him,” ECF No. 12 at 10, but provides no case law suggesting that Connecticut law supports his “attempt to seek recourse.” The Connecticut General Assembly can modify Connecticut common law if it so chooses. Mr. Zyda asserts that “witnesses must be deposed, digital files must be produced, subpoenas must be served . . . and Ning will need to provide extensive testimony,” *id.*, but Mr. Zyda fails to explain *what* witnesses, *what* files, *what* subpoenas, *what* they expect the documents will show, and *what* they expect Ms. Ning’s testimony to show—or how this expedition is supported by Connecticut law. Failing to provide any substantiation for *why* it “seems likely that further evidence . . . will be uncovered as discovery progresses,” *id.*, all that is left is the precise type of lawsuit that the Connecticut General Assembly intended to make not actionable.

Mr. Zyda also claims that to apply Connecticut’s § 52-196a to his Connecticut law defamation claim will “not only limit Zyda’s constitutional rights, but . . . inherently ignore them,” but Mr. Zyda fails to provide any substantiation for his “constitutional rights” claim, nor does he define what constitutional rights he believes would be violated by the application of the statute to his claim. In truth, no constitutional right of Mr. Zyda is implicated by his not being allowed to maintain an action under Connecticut law that is not supported by Connecticut law.

III. This SLAPP Targets Ms. Ning’s Speech Against a Public Figure, Mr. Zyda

Mr. Zyda makes several arguments to avoid application of § 52-196a. First, he argues that Ms. Ning’s text messages to her friend, informing her of her claims against Mr. Zyda, are “not protected communications,” because she only mentioned the EEOC, LAPD, and District Attorney later in the text message thread. This fails to recognize the messages’ context. Ms. Ning’s requests for help from her friend are clear when put in the context of her express

mentions of the EEOC, LAPD, and the District Attorney later on. But even if she had not expressly mentioned these government agencies, Mr. Zyda cannot seriously contend that speech is not protected speech if one does not expressly mention government actors to which one is seeking assistance. That Ms. Ning was expressing her views on her personal experiences that have large societal implications suffices to show she was engaging in protected speech.

Next, Mr. Zyda argues that his treatment of Ms. Ning is not a matter of public concern because it is a matter of “internal employment policies.” ECF No. 12 at 12. But as Mr. Zyda notes later in his memorandum, “slavery still exists in the United States today, especially as it pertains to the trafficking of foreign women.” *Id.* at 17. Ms. Ning’s complaints about Mr. Zyda’s labor practices are about more than a disagreement with “internal employment policies.” As Mr. Zyda repeatedly points out, not least by suing her for defamation over it, Ms. Ning believes that his treatment of her crossed the line – sexually, through coercion, and through living conditions – into “modern day slavery.” *Id.* This is her commentary and her opinion on what she experienced. It is not defamation.

Mr. Zyda says “she was his roommate, plain and simple.” ECF No. 22 at 17. That is his opinion. But he provides no evidence. No lease or sublet agreement. No photographs or text messages. Nothing to substantiate his position at all. Mr. Zyda says “[r]oommates provide support to each other and sometimes cook meals for each other,” *id.*, but Mr. Zyda provides no evidence of him cooking a meal for Ms. Ning, or Ms. Ning asking him to rub her feet. The evidence in this case has been all one-way. Ms. Ning has produced substantial evidence that Mr. Zyda did treat Ms. Ning as a modern-day slave. No evidence has been produced to rebut this. Accordingly, Mr. Zyda has shown no likelihood of success on his contrived defamation claim, which should be dismissed under Connecticut law.

Mr. Zyda argues that because he believes Ms. Ning has animus toward him, her communications are not protected or a matter of public concern. ECF No. 22 at 13. Not so. Ms. Ning's animus, if any, is toward Mr. Zyda's *conduct*. That conduct rises to the level of public concern because it violates the law, threatens community safety, and endangers vulnerable communities. The notion that the protest of an immigrant who has felt trapped under the thumb of an abusive employer for years after sexual advances and threats of deportation is not protected by the First Amendment is risible and should offend this Court. That counsel has raised this preposterous notion in their motion papers is further evidence this is a SLAPP.

Mr. Zyda also attempts to argue that he is not a public figure. ECF No. 22 at 14. But Mr. Zyda knifes his own argument by admitting that "there is an international community of virtual reality specialists and Zyda is well-known in this industry," *id.*, and later in his memorandum, ECF No. 12 at 16, saying Ms. Ning's "iStarVR project . . . is at dispute in this litigation." Ms. Ning's allegedly defamatory statements are about how Mr. Zyda has achieved his purported accomplishments through the exploitation of others, like Ms. Ning. Ms. Ning alleges that Mr. Zyda had her working as a temporary CEO, doing marketing research, production, design, finance, hiring, and PR, using her immigration status to coerce her and exploiting her on the basis of her disabilities. And indeed, it is only in the community in which Mr. Zyda is a public figure, at USC, in which he complains that Ms. Ning's defamation has harmed his reputation.

IV. Mr. Zyda Fails to State a Claim and Shows No Probability of Success

Even if this Court were to evaluate Mr. Zyda's counterclaims solely under Rule 12, they fail, as Mr. Zyda acknowledges that the only allegations of falsity in his entire counterclaim are the following two conclusory allegations:

1. “she ‘published a series of verifiably false statements about Zyda in WeChat messages...’ and
2. ‘intentionally published a series of false statements about Zyda...to Lu Ning’s February 11, 2023 GoFundMe page.’ See ECF No. 20.00, at 16-17 ¶¶ 40-42.”

Neither of these allegations identify (1) which statement “in WeChat messages” or “published . . . to Lu Ning’s . . . GoFundMe page” are false, or (2) what about them is false. These allegations fail to put Ms. Ning on notice of what she even is to defend as true, because they fail to identify what statement and what is false. This is plainly inadequate under *Iqbal/Twombly*.

Mr. Zyda says that the defamatory statements do not need to name him, only “cause pecuniary harm,” ECF No. 12 at 15, to him. But he presented no evidence of any pecuniary harm with his response to the motion to dismiss.

Mr. Zyda provides no evidence that anyone understood the GoFundMe posts to be about him. All he musters is speculation that “it is clear . . . it is extremely likely that members of the audience of this statement would know that it was about Zyda.” ECF No. 12 at 16. In support of this, Mr. Zyda points to Ms. Ning’s disclosure that she has spoken to three donors about this lawsuit, that another individual was “involved in the iStarVR project,” and that three others are USC alumni “who are likely to know of Michael Zyda.” *Id.* at 17. But no proof is offered that any of these individuals knew that it was Mr. Zyda who Ms. Ning was complaining about when they donated to Ms. Ning on GoFundMe. It is all speculation, without any declarant.

Mr. Zyda says that Ms. Ning’s opinion that his labor practices are modern day slavery is defamation *per se*, but Mr. Zyda provides no citation to any authority for this point. That is because it is opinion that is not actionable. Mr. Zyda’s contention would allow employers across

Connecticut to silence their workers whenever they believe their workers' criticism went too far. Calling your boss a "slave driver" is now tortious? This is not the law. Ms. Ning is free to complain about her working conditions, in which she was asked by a much older man to massage his feet. Ms. Ning knew it would give him an erection and declined. Ms. Ning was punished by Mr. Zyda for refusing to rub his feet and give him an erection. After she refused, he would threaten to send her to China. That's not just roommates supporting each other. When backed up by threats to deport Ms. Ning to China, Ms. Ning's experience of sexual harassment and exploitation became oppressive labor trafficking. Connecticut law gives her the right to speak up and speak out about that. Mr. Zyda has no right under Connecticut law to silence her.

Finally, Mr. Zyda again argues that Ms. Ning's speech is not on matters of public concern. ECF No. 12 at 18. But abuse is not a private matter because the abuse happened in a house, or because a powerful man used his private business to accomplish it. Absolute nonsense. As discussed above, and as Mr. Zyda himself acknowledges, the issue of modern-day slavery is absolutely a matter of public concern. It is only "dangerous," ECF No. 22 at 4, 20, to Mr. Zyda because he engages in it.

Mr. Zyda then argues that slavery can mean "someone (such as a . . . domestic laborer) who is coerced often under threat of violence to work for little or no pay." ECF No. 22 at 19. That is exactly what Ms. Ning reports about her experiences with Mr. Zyda. Mr. Zyda does not deny that she did work in his home, rendering her a domestic laborer. Mr. Zyda admits there is "the social context in which women, particularly women from foreign countries . . . can be subjected to enslavement by wealthy people in the United States," *id.* at 20, and he is right: that is what he did to Ms. Ning. Ms. Ning's statements that she was enslaved are therefore fair commentary on the way she was treated by Mr. Zyda, which is a matter of public concern

precisely because it was so abusive and exploitative. It is only “dangerous” to Mr. Zyda, *id.*, because it is the truth, and because he has gotten away with it for so long.

Mr. Zyda says he “has demonstrated the Plaintiff’s malice in making the statements that she did,” ECF No. 12 at 20, but cites no evidence for this assertion. Mr. Zyda further contends “further discovery would likely demonstrate even more evidence of malice,” *id.* at 21, without identifying what discovery would demonstrate what evidence of what malice.

Mr. Zyda says further discovery will produce evidence for his claim by pointing to Ms. Zyda’s discovery responses. *Id.* But what Mr. Zyda points to is simply a very broad discovery request, which therefore produced a large number of responsive documents in response. Mr. Zyda says Ms. Ning’s claims are “demonstrably false,” but produces no evidence to demonstrate any falsity.

Finally, Mr. Zyda argues that he can rely on evidence outside the pleadings. ECF No. 12 at 21-22. On this point, at least, Mr. Zyda is right. But Mr. Zyda’s counsel has not produced any. Particularly on the question of actual malice, Mr. Zyda relies entirely on his argument that he is not a public figure, and his speculation that discovery will turn up evidence of malice.

Thus, even “consider[ing] all evidence provided by Zyda,” ECF No. 12 at 22, Mr. Zyda fails to state a claim of defamation against Ms. Ning and has failed to show any probability of success on his claim.

Mr. Zyda admits his counterclaim against Ms. Ning is an attempt to gain further discovery, to impose greater cost, and to silence Ms. Ning from criticizing Mr. Zyda in the public sphere in the manner in which she has, which he disagrees with. This type of stifling of constitutional rights Connecticut law does not allow. Accordingly, Mr. Zyda’s Connecticut law

claim for defamation must be dismissed, and Ms. Ning's claim for attorney's fees should be granted under § 52-196a.

CONCLUSION

Ms. Ning has incurred thousands of dollars in attorney's fees defending against Mr. Zyda's counterclaim and his burdensome discovery requests. Connecticut law provides a substantive benefit to individuals like Ms. Ning who are victimized by powerful men like Mr. Zyda by using the Court system to target their exercise of constitutional rights. Connecticut law SLAPPs the lawsuits down, and provides the victims with a claim for attorney's fees. Connecticut law therefore requires this Court to grant Ms. Ning's anti-SLAPP motion to dismiss, and Ms. Ning should be awarded reasonable attorney's fees *pendente lite* to repair the harm caused by Mr. Zyda's counterclaim, after being given an opportunity to submit a fee petition. Nothing in the Federal Rules is to the contrary. Accordingly, the motion should be granted.

Respectfully Submitted,

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COUNTERCLAIM DEFENDANT

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