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LOS ANGELES SUPERIOR COURT

## SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

**RULING ON CROSS-DEFENDANT'S** NICOLE'S SPECIAL MOTION TO STRIKE

Case No.: No. BC 422403 JAYDE NICOLE, an individual,

JOSEPH R. FRANCIS, an individual,

**Cross-Complainant** 

VS.

VS.

DOES 1-10, inclusive,.

JAYDE NICOLE, BRODY JENNER, individuals; and DOES 1-20, inclusive

Plaintiff,

JOSEPH R. FRANCIS, an individual; and

Defendant

Cross-defendant

Cross-defendant Jayde Nicole's Special Motion to Strike Cross-Complainant Francis's 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> causes of action was heard by the Court on February 4, 2010. After due



consideration of the arguments of counsel and those materials submitted in support of and opposition to the motion, the Court now rules as follows:

Cross-defendant Nicole's motion is GRANTED in its entirety.

In ruling on a special motion to strike under Code of Civil Procedure § 425.16, the court engages in a two step process. The moving party has the burden to demonstrate that the challenged cause of action is one arising from protected activity. If the court finds that the appropriate showing has been made, the burden then shifts to cross-complainant to demonstrate a probability of prevailing on the claim.

The challenged activity that serves as the gravamen of Cross-complainant's causes of action against Nicole stem from a series of statements she made to TMZ shortly following an altercation between her and Francis at a night club. TMZ is a celebrity news web site. There appears to be no dispute that statements made to TMZ are made in a public forum. Nicole is alleged to have stated:

"...he turned around he grabbed my hair and he punched me in the face...he pushed me to the ground...he kicked me in my stomach and my chest...and right here " (she points to a spot on her neck). NICOLE then made the following admission, "I don't know what happened, I fell to the ground." *Cross-Complaint*, page 5, lines 3-5.

Based upon these statements, cross-complainant Francis has filed claims against Nicole for liable, slander and false light.

For purposes of §425.16, protected activity includes "any written or oral statement or writing made in a place open to the pubic or a public forum in connection with an issue of public interest;" §425.16(e)(3). Moreover, it is the stated legislative intent that "this section shall be construed broadly."



The court finds that the statement attributed to cross-defendant Nicole comes within the ambit of §425.16.

The question as to whether someone is a public figure is a determination for the court. Stolz v. KSFM 102 FM (1994) 30 Cal.App.4<sup>th</sup> 195, 203-204. It is clear to the court that Joseph Francis is a public figure. He is the subject of numerous newspaper articles and internet articles. He has his own web page, a Wikipedia entry and a book chapter devoted to him. (Clifford declaration, Exhibits A - AA.)

The determination that some one is a public figure, does not, in and of itself, require the court to find that all statements concerning him are necessarily a matter of public interest. What compels the court to find the statements at issue in this litigation to be protected is the nature of those statements in reference to Mr. Francis. As the producer of the "Girls Gone Wild " DVD series, Cross-complainant has been the subject of much public discussion concerning his treatment of women. It has been asserted that his "Girls Gone Wild" series exploits and objectifies young women. (*Clifford declaration*, exhibits V – AA.) As such, the statements attributed to Cross-defendant Nicole as to how she was treated by Francis on this particular occasion would have a connection to this issue. The statements would contribute in some manner to the public discussion of this topic.

Having determined that the statements at issue were made in connection with an issue of public interest, the court must now determine whether cross-complainant has demonstrated a probability of prevailing on his claim. The court finds that the cross-complainant has failed to meet his burden on this prong.

The cross-complaint fails to allege that Nicole made the statements with actual malice. In a defamation action such as this, the omission is a fatal defect rendering the relevant causes of action legally insufficient on their face. (*Vogel v. Felice* (2005) 127 Cal.App.4<sup>th</sup> 1006, 1017.)



Indeed, the cross-complaint fails to set forth any allegations regarding Nicole's knowledge that the statements were false, or that she had serious doubts about the truth of the statements.

Notwithstanding the defects in the pleading, when the court considers the evidence submitted by the parties, the court still finds that cross-complainant fails to meet his burden. Cross-complainant's evidence consists essentially of Mr. Francis' declaration denying that he punched, pushed or kicked Nicole. (*Francis Declaration*, Paragraph 12.) Such a denial does nothing, however, to establish Nicole's knowledge of the falsity of the statement.

Cross-complainant does not deny that Nicole sustained injuries; rather Mr. Francis seems to speculate that those injuries were caused by others. He states that there "were many people around us ...and gathered around her thereby bumping against her." (*Francis Declaration*, Paragraph 11.) This evidence does not establish Nicole's knowledge that these injuries were not in fact caused by Francis. Indeed, cross-complainant even quotes Nicole as saying "I don't know what happened."

Finally, Nicole's evidence establishes that she had a good faith belief in the truth of the statements when she made them. While she may not have been sure what exactly had occurred, her statements to TMZ were based upon what witnesses to the altercation had informed her as well as her own perceptions and injuries. The evidence fails to establish that Nicole made the statements with knowledge that they were false, or with a reckless disregard of the truth.

Cross-defendant Nicole's Special Motion to Strike Cross-complainant Francis' fourth cause of action for slander, fifth cause of action for libel and sixth cause of action for false light age hereby granted. Moving party may seek attorney fees pursuant to § 425.16(c).

Date February 5, 2010

Mark V. Møoney

Judge of the Los Angeles

Superior Court