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**LOS ANGELES
SUPERIOR COURT**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

JAYDE NICOLE, an individual,

Plaintiff,

vs.

JOSEPH R. FRANCIS , an individual; and
DOES 1-10, inclusive,.

Defendant

) Case No.: No. BC 422403

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

JOSEPH R. FRANCIS, an individual,

Cross-Complainant

vs.

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

Cross-defendant

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

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

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

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

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

14
15 "...he turned around he grabbed my hair and he punched me in the face...he pushed me
16 to the ground...he kicked me in my stomach and my chest...and right here " (she points
17 to a spot on her neck). NICOLE then made the following admission, "I don't know what
18 happened, I fell to the ground." *Cross-Complaint*, page 5, lines 3-5.

19
20 Based upon these statements, cross-complainant Francis has filed claims against Nicole
21 for liable, slander and false light.

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

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

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

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

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

22 The cross-complaint fails to allege that Nicole made the statements with actual malice.
23 In a defamation action such as this, the omission is a fatal defect rendering the relevant causes of
24 action legally insufficient on their face. (*Vogel v. Felice* (2005) 127 Cal.App.4th 1006, 1017.)
25

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

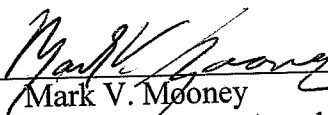
3 Notwithstanding the defects in the pleading, when the court considers the evidence
4 submitted by the parties, the court still finds that cross-complainant fails to meet his burden.
5 Cross-complainant's evidence consists essentially of Mr. Francis' declaration denying that he
6 punched, pushed or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

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

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

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

22 Date February 5, 2010

23 By: 
24 Mark V. Mooney
25 Judge of the Los Angeles
Superior Court