

DOCKET NO. LLI-CV21-5014019-S	:	SUPERIOR COURT
	:	
JON A. GOODWIN	:	JUDICIAL DISTRICT
	:	OF LITCHFIELD
V.	:	AT TORRINGTON
	:	
RAYMOND J. MILOT, ET AL.	:	FEBRUARY 3, 2022

**OBJECTION TO MOTION FOR PERMISSION
TO CONDUCT LIMITED DISCOVERY**

The defendant, Joanne Iurato, Ph.D., MSW, LCSW, respectfully objects to the plaintiff's Motion for Permission to Conduct Limited Discovery regarding the defendant's Special Motion to Dismiss (Entry No. 117.00).

The plaintiff's Motion should be denied for three reasons. First, the plaintiff has failed to present good cause to override the statutory stay of discovery. Second, the proffered discovery is not "specified and limited" as required, and in fact, the plaintiff offers no insight into what issue the discovery is intended to address. Third, the proffered discovery undermines the very purpose of the anti-SLAPP statute. Accordingly, the plaintiff's Motion should be denied and the Court should proceed with argument on the Special Motion to Dismiss scheduled for February 14, 2022.

I. Background

The case involves Dr. Iurato's decision, as a mandated reporter, to notify the Department of Children and Families (DCF) of her concern that a child was at imminent risk of serious harm from the child's mother and an unrelated

adult male. The unrelated adult male is the plaintiff, Jon Goodwin. He is now suing Dr. Iurato and others in a 33-Count Complaint.¹

On December 23, 2021, the defendant filed a Special Motion to Dismiss and Memorandum of Law pursuant to the Connecticut anti-SLAPP statute, Conn. Gen. Stat. § 52-196a (Entry Nos. 106.00-107.00). The basis of the defendant's Motion is three-fold: (1) the plaintiff's lawsuit is a prohibited SLAPP suit and the plaintiff cannot demonstrate probable cause on the merits because the defendant is entitled to immunity from civil liability in accordance with Conn. Gen. Stat. §17a-101e; (2) the defendant has absolute immunity from liability based upon the litigation privilege; and (3) the causes of action sound in medical malpractice and Mr. Goodwin failed to comply with the requirements of Conn. Gen. Stat. § 52-190a.

The defendant's Special Motion to Dismiss, and a Special Motion to Dismiss filed by the co-defendant, Robert Khalil, M.D. (Entry Nos. 111.00-112.00), are scheduled to be argued on February 14, 2022.

Instead of filing oppositions, on January 19, 2022, the plaintiff filed the subject Motion for Permission to Conduct Limited Discovery. On its face, the plaintiff is not requesting "limited" discovery, but is seeking to engage in broad, merit-based discovery which will inevitably invite even more protracted discovery, all in derogation of the statute.

¹ The original Complaint was 34 Counts. Count 30, directed at Attorney Karen Hardy-Massaro, was dismissed by the Court (*Lynch, J.*) on January 24, 2022 (Entry No. 101.20).

II. Legal Argument

SLAPP is an acronym for “strategic lawsuit against public participation,” the “distinctive elements of [which] are (1) a civil complaint (2) filed against a nongovernment individual (3) because of their communications to government bodies (4) that involves a substantive issue of some public concern. . . . The purpose of a SLAPP suit is to punish and intimidate citizens who petition state agencies and have the ultimate effect of chilling any such action.” (Citation omitted; internal quotation marks omitted.) Field v. Kearns, 43 Conn. App. 265, 276, cert. denied, 239 Conn. 942 (1996).

The anti-SLAPP statute, Conn. Gen. Stat. § 52-196a, provides in relevant part:

(b) In any civil action in which a party files a complaint . . . against an opposing party that is based on the opposing party’s exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, such opposing party may file a special motion to dismiss the complaint . . .

(d) The court shall **stay all discovery** upon the filing of a special motion to dismiss. The stay of discovery shall remain in effect until the court grants or denies the special motion to dismiss and any interlocutory appeal thereof. Notwithstanding the entry of an order to stay discovery, the court, upon motion of a party and a **showing of good cause**, or upon its own motion, **may order specified and limited discovery** relevant to the special motion to dismiss.

(e)

(1) The court shall conduct an **expedited** hearing on a special motion to dismiss. The expedited hearing shall be held not later than sixty days after the date of filing of such special motion to dismiss, unless, (A) the court orders specified and limited

discovery pursuant to subsection (d) of this section, in which case, the expedited hearing shall be held not later than sixty days after the date on which such specified and limited discovery must be completed, (B) the parties agree to a hearing date that is beyond the sixty-day period, or (C) the court, for good cause shown, is unable to schedule the hearing during the sixty-day period.

. . .

(3) The court shall grant a special motion to dismiss if the moving party makes an initial showing, by a preponderance of the evidence, that the opposing party's complaint . . . is based on the moving party's exercise of its right of free speech, right to petition the government, or right of association under the Constitution of the United States or the Constitution of the state in connection with a matter of public concern, **unless the party that brought the complaint . . . sets forth with particularity the circumstances giving rise to the complaint . . . and demonstrates to the court that there is probable cause, considering all valid defenses, that the party will prevail on the merits of the complaint . . .**

(4) The court shall rule on a special motion to dismiss **as soon as practicable**.

(Emphasis added.) Conn. Gen. Stat. § 52-196a.

Pursuant to the plain language of Conn. Gen. Stat. § 52-196a(d), when a defendant files a Special Motion to Dismiss, the plaintiff is not provided the right to conduct discovery. To the contrary, discovery is automatically stayed. To rescind the stay, the plaintiff must present "good cause" to justify "specified and limited discovery" related to the Special Motion to Dismiss. Conn. Gen. Stat. § 52-196a(d). "[E]ach case will present different claims and defenses bearing on whether limited discovery should be granted." Lafferty v. Jones, 336 Conn. 332, 382 (2020).

In the present case, the plaintiff's Motion should be denied for three reasons.

First and foremost, the plaintiff has failed to present any showing – let alone a good faith showing – to justify discovery. Without identifying a single issue or purpose for discovery, the very abuse the defendant’s Special Motion to Dismiss is intended to prevent would be perpetrated. The plaintiff’s entire argument in support of his Motion consists of a reference to Conn. Gen. Stat. § 52-196a(d) and a citation to Lafferty v. Jones, supra.² The plaintiff does not set forth what additional facts he expects to uncover, what relevant issue he seeks to address, or why the discovery he is requesting is necessary to carry his burden of demonstrating to the Court that there is probable cause he will prevail on the merits of the Complaint.³

Second, the proffered discovery is not “specified and limited.” The plaintiff wishes to depose Dr. Iurato and Dr. Khalil “concerning the matters set forth in their Special Motions to Dismiss.” He also wishes to conduct record keeper depositions of DCF and the Superior Court for Juvenile Matters “concerning their investigations and hearings.” Such discovery is the opposite of “specified and limited.” Indeed, it is

² In Lafferty v. Jones, the trial court did permit limited discovery. However, the facts of Lafferty do not begin to approach the facts of the case at bar. Lafferty involves a lawsuit filed by a first responder and family members of those killed in the Sandy Hook Elementary School shooting against defendants who advanced conspiracy theories about the shooting. Suffice it to say, the two cases are not comparable.

³ To be clear, in order for the plaintiff to prevail on the merits of his Complaint, he must do more than prove that he did not engage in inappropriate conduct. Whether he did or not, Dr. Iurato cannot be held liable for her good faith reporting. The public policy of our State is to promote – and with mandated reporters, to require – the reporting of any child who is suspected or believed to be at imminent risk of serious harm; and to immunize any individual who reports in good faith. Accordingly, the plaintiff would have to prove that Dr. Iurato acted in bad faith. Secondly, the plaintiff would have to overcome Conn. Gen. Stat. § 52-196a, which prohibits litigation of civil complaints filed against nongovernment individuals based upon their communication to a government body involving a substantive issue of public concern. Thirdly, the plaintiff would have to overcome absolute immunity based upon the litigation privilege. And lastly, the plaintiff would have to overcome non-compliance with § Conn. Gen. Stat. 52-190a.

difficult to imagine more sweeping discovery than the depositions and subject matters identified by the plaintiff.

Lastly, the proffered discovery is directly contrary to the purpose of the anti-SLAPP statute. Indeed, if the plaintiff is permitted to pursue the discovery, such order would nullify the stay provision, since any plaintiff could easily argue that discovery is necessary to respond to the Special Motion to Dismiss. That cannot have been the legislative intent. In fact, the legislature intended the opposite. In Lafferty, the Supreme Court addressed the meaning of “good cause” and the purpose of anti-SLAPP statute:

Although the legislative history of the anti-SLAPP statute does not further illuminate the meaning of the phrase “good cause,” as used in § 52-196a (d), we find the purpose of the statute instructive. Speaking in support of the bill later enacted as § 52-196a, then Representative William Tong explained that it was intended to address “situations in which people have spoken out on matters of public concern including the press and we’ve seen situations where people file litigation. There appears to be no basis to that litigation but it’s designed to chill free speech and the expression of constitutional rights, and so this provides for a special motion to dismiss so that early in the process somebody who’s speaking and exercised their constitutional rights can try to dismiss a frivolous or abusive claim that has no merit and short circuit a litigation where it might otherwise cost a great deal of money to continue to prosecute. We think it’s an important measure . . . to promote free speech and reporting by our news organizations as well.” 60 H.R. Proc., Pt. 16, 2017 Sess., pp. 6879-80[.]

Lafferty, 336 at 381 n.36. See also Rivas v. Pepi, judicial district of Stamford-Norwalk at Stamford, Docket No. FSTCV186034927S (August 16, 2018, *Jacobs, J.*) (2018 Conn. Super. LEXIS 1797, *4) (“According to the session transcripts from the debate concerning §52-196a, the general intent was to protect the free flow of ideas amongst people and to get lawsuits that would jeopardize this notion dismissed as

early as possible.”); Cronin v. Pelletier, judicial district of Tolland at Rockville, Docket No. CV186014395S (July 26, 2018, *Sferrazza, J.*) (2018 Conn. Super. LEXIS 1667, *7) (discovery is severely limited by the filing of a special motion to dismiss; “the harshness of these results is a consequence of legislative judgment in enacting §52-196a rather than the product of abstruse rules of practice”).

In the case at bar, the plaintiff is asking the Court to ignore the legislature’s clear purpose and permit broad discovery, thereby delaying adjudication of the Special Motions to Dismiss. The Court should not countenance this attempt to delay what is supposed to be a very streamlined proceeding.

Wherefore, the defendant respectfully objects to the plaintiff’s Motion and asks the Court to proceed with argument on the Special Motions to Dismiss scheduled for February 14, 2022.

THE DEFENDANT,

By: /s/ Jonathan A. Kocienda

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CERTIFICATION

I hereby certify that a copy of the foregoing document was or will immediately be mailed or delivered electronically or non-electronically on this the 3rd date of February, 2022 to all attorneys and self-represented parties of record and that written consent for electronic delivery was received from all attorneys and self-represented parties of record who receive or will immediately be receiving electronic delivery.

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