

CASE BRIEF
Murphy v. Twitter
CGC-19-573712 (2019)
A158214 (2021)

KEYWORDS

california anti-SLAPP law,demurrer,section 230,promissory estoppel

ISSUE

1. When does the public interest exception to SLAPP apply in California?
2. Does Section 230 immunity apply to Tweets?
3. For promissory estoppel, can you pick and choose which promises to rely on?

ANSWER

1. California Code of Civil Procedure Section 425.17(b) says the anti-SLAPP rule does not apply to any action brought solely in the public interest if the plaintiff does not seek any relief greater than relief sought for the general public.
2. Yes, Twitter is the provider...of an interactive computer service within the definition in Section 230.
3. To prove promissory estoppel one must prove that, under the circumstances, a reasonable person would have relied on a promise.

PROCEDURAL HISTORY

Filed: May 7, 2019

Decided: June 12, 2019

Appealed: January 22, 2021

Murphy claims that Twitter failed to give her a 30-day advance notice of a change to Twitter's Hateful Conduct Policy then applied these changes retroactively to ban her account. Murphy seeks three causes of action:

- 1) breach of contract based on no advance notice and retroactive enforcement of changes to the Hateful Conduct Policy
- 2) loss of economic interests based on Twitter failing to keep "clear and unambiguous" promises in its Terms of Service, Rules, and Enforcement Guidelines such as Twitter "does not actively monitor user's content and will not censor user content...except in limited circumstances"
- 3) violations of the Unfair Competition Law, Business & Professional Code Section 17200 because Twitter suspends or bans accounts "at any time for any reason" after falsely claiming to be a free speech platform

Murphy seeks injunctive relief forcing Twitter to allow her to post content expressing her viewpoint

Twitter filed a special motion to strike the complaint under California anti-SLAPP law, Code Civil Procedure Section 425.16 along with a demurrer or request to dismiss the complaint. Court denied the special motion to strike complaint under California Code of Civil Procedure Section 425.16 and sustained demurrer to complaint without leave to amend because the court did not believe this case could be amended to state a cause of action. Appellate court affirmed.

STATEMENT OF FACTS

The Vancouver Rape Relief and Women's Shelter is a rape crisis center offering women shelter from abusers. This shelter was sued in 1995 and 2005 for failing to provide services to transgender women. Hailey Heartless is a transgender woman whose legal name is Lisa Kreut. Around 2017, Kreut helped organize a successful effort to prohibit British Columbia Federation of Labour and affiliated unions from funding the Vancouver Rape Relief and Women's Shelter, on the ground that it limited its services to biological females and excluded transgender women.

Twitter, Inc. is a private social media platform where users post content called, "Tweets". Meghan Murphy is a feminist journalist. Murphy began Tweeting feminist content in April 2011 and eventually gained about 25,000 followers. In January 2018, Murphy Tweeted that Kreut was a "white man", "trans-identified male misogynist", and used male pronouns when referring to Kreut. In August 2018, Twitter temporarily suspended Murphy's account, claiming that these Tweets violated Twitter's Hateful Conduct Policy which generally stated that Twitter does "not allow people to promote violence or threaten others on the basis of race, ethnicity, national origin, sexual orientation, gender, gender identity, religious affiliation, age, disability, or disease". In October 2018, Twitter amended their Hateful Conduct Policy to prohibit "targeting individuals with repeated slurs...or other content that intends to dehumanize, degrade or reinforce negative...stereotypes about a protected category. This includes targeted misgendering or deadnaming of transgender individuals." In November 2018, Twitter permanently banned Murphy.

HOLDINGS

Dismissed

Confirmed

REASONING

Public Interest Exception to SLAPP Applies

A Strategic Lawsuit Against Public Participation (SLAPP) is a lawsuit intended to censor, intimidate, and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition.

California Code of Civil Procedure Section 425.17(b) says the anti-SLAPP rule does not apply to any action brought solely in the public interest if the plaintiff does not seek any relief greater than relief sought for the general public. Murphy sought no monetary relief other than attorneys fees. She sought injunctive relief for all Twitter users whose accounts were banned because they violated the misgendering rule of Twitter's Hateful Conduct Policy, as well as, accounts suspended by retroactive changes to Twitters terms and polices. Because

Murphy does not seek relief greater than due to the public, the public interest exception to SLAPP applies. Twitter's anti-SLAPP motion was denied.

Section 230 Immunity

Twitter contends that this complaint is barred by Section 230 of the federal Communications Decency Act and the court agreed. No provider of an interactive computer service shall be treated as the publisher or speaker of information provided by another information content provider. An information content provider is any person or entity responsible in whole or in part for the creation of information provided through the Internet. There is no dispute that Twitter is the provider...of an interactive computer service within the definition in Section 230. There is no dispute that Murphy's Tweets are information provided by another information content provider. The dispute arises because all three of Murphy's causes of action seek to impose liability on Twitter for its actions in suspending or banning accounts and in enforcing policies governing permissible scope of content - all these actions are within traditional scope of publisher's role. Congress gave Section 230 immunity from publisher liability in 1996, in order to promote the free exchange of information and ideas and to encourage voluntary monitoring for offensive or obscene material.

Appellate court discussion of promissory estoppel

Promissory estoppel is the legal principal that a promise is enforceable by law. In contract law, a party may recover on the basis of a promise when that party could reasonably rely on the promise and suffered as a result. To prove promissory estoppel one must prove that there was a clear and unambiguous promise, a party relied on this promise, a reasonable person would have relied on this promise, and the party relying on the promise was injured as a result.

Murphy alleged that Twitter violated several unambiguous, public promises not to censor content or to enforce retroactive policy changes. While Twitter published "clear and unambiguous" promises online and verbally during Congressional hearings where Twitter's CEO testified, the court disagrees that it was reasonable for Murphy to pick and choose which promises she relied on. Twitter reserves the right to "remove or refuse to distribute any Content" and to suspend or terminate any account "for any or no reason". Thus, a reasonable person would believe that an account may be suspended. Thus, Murphy did not make a valid claim for promissory estoppel.