

2014 WL 3709773 (Cal.Super.) (Trial Order)
Superior Court of California.

Ventura
Ventura County

Scott FRITSCHLE,

v.

Christie LEON.

No. 56-2012-00428780-CU-DF-VTA.

January 13, 2014.

Minute Order

Scott Fritschle, self represented Plaintiff, present.

[Aaron N. Colby](#), counsel, present for Defendant(s).

[Mark Borrell](#), Judge.

*1 CLERK: Robin Adams

REPORTER/ERM: [none]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Defamation

EVENT TYPE: Motion for Summary Judgment and/or Adjudication ; Memorandum of Points and Authorities

MOVING PARTY: Christie Leon

CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment and/or Adjudication ; Memorandum of Points and Authorities, 10/25/2013

At 09:03 am, court convenes in this matter with all parties present as previously indicated.

Matter submitted to the Court with argument.

The Court finds/orders:

Plaintiff's oral motion to continue is denied.

The Court's tentative is adopted as the Court's ruling.

[start of tentative ruling]

Defendant, Christie Leon, moves for Summary Judgment or, Alternatively, Summary Adjudication on the complaint of plaintiff, Scott Fritschle's Complaint. No written opposition to the motion has been filed.

The court finds for the purposes of this motion only, that (i) Defendant Christie Leon's Material Facts Nos. 1 through 7 and 10 are supported by the cited-to evidence and established; (ii) Defendant Leon's Material Fact No. 9 is established as to the first sentence but not the second; and (iii) Defendant Leon's Material Fact No. 9 is supported and established, except that the evidence indicates that Defendant Leon told her co-worker Maryanne Joaquin that Plaintiff was also “sick.”

Defendant is entitled to summary judgment on the ground that there is no triable issue of fact as to whether all of Plaintiff's claims against Leon are barred by the common interest privilege set forth in [Civil Code § 47\(c\)](#). Specifically:

The main operative allegations of Plaintiff's Complaint against Leon are found in ¶¶8 and 9 of the Complaint, which are incorporated by reference into each of the six causes of action therein:

“8. On or about December 15, 2012, CHRISTIE LEON made one or more false oral and written statements to FRITSCHLE's co-workers and/or supervisors that FRITSCHLE inappropriately touched a minor in a sexual manner while at work (the ‘Defamatory Accusation’). On that date FRITSCHLE became the subject of an inquiry and investigation by Kaiser as a result of and concerning the Defamatory Accusation. It was on this date and during this inquiry that FRITSCHLE first learned of the Defamatory Accusation.

9. As a result of the false statements, FRITSCHLE was irreparably damaged in his reputation, profession, and occupation. Namely, he was restricted from the pediatric unit and his hours were drastically reduced among other things. In addition, FRITSCHLE was subject[ed] to hatred, contempt, ridicule, and/or shame. Moreover, FRITHSCHLE was subjected to extreme shame, mortification, and hurt feelings.” (Complaint, ¶¶8, 9.)

The above allegations indicate that Plaintiff's claims against Leon are based on a single Defamatory Accusation involving statements regarding inappropriate touching of a single minor, made to co-workers and supervisors.

The nature of the statements in the alleged Defamatory Accusation is established by Leon by setting forth Material Facts Nos. 5 and 9 in her separate statement, and by submitting evidence in the form of ¶¶7, 8, and 9 of Leon's declaration, ¶¶3 and 4 of her (and Plaintiff's) supervisor Susan Akopyan's declaration, and ¶6 of Joaquin's declaration. The general thrust of the statements – made by Leon to Akopyan, Akopyan's supervisors, and Leon's co-worker and fellow Respiratory Care Practitioner (“RCP”) Joaquin – was that Plaintiff had acted inappropriately toward and inappropriately touched a young female patient during a “code blue” in a manner that Leon found to be sexually suggestive. Leon also described Plaintiff to Joaquin as a “sick fucking pedophile.”

*2 Leon sets forth sufficient Material Facts in her Moving Separate Statement and cites to sufficient supporting evidence to indicate that the alleged Defamatory Accusation communicated to her supervisor, her supervisor's supervisors, and her co-worker falls with the qualified common interest privilege set forth in [Civil Code § 47\(c\)](#). (*Cuenca v. Safeway San Francisco Employees Fed. Credit Union* (1986) 180 Cal. App. 3d 985, 995-996 [“Cuenca”].)

Specifically, Leon sets forth facts in her Moving Separate Statement and cites to supporting evidence indicating that Kaiser Permanente's (her and Plaintiff's employer) Code of Conduct included “Principles of Responsibility” requires employees to speak up regarding perceived improprieties and indicates that employees can be disciplined, even terminated, for failing to do so. (See Moving Separate Statement, Material Fact No. 7, and evidence cited to therein.)

Leon also sets forth Material Facts and cites to supporting evidence indicating that the comments made by Leon all pertained to an incident with a minor female patient during a “code blue” in which Leon perceived Plaintiff's conduct toward the minor to be inappropriate. (*Id.* at Material Facts Nos. 2 through 4, and evidence cited to therein.) Given Kaiser's Principles

of Responsibility requiring Leon to speak up about perceived improprieties, and given the fact that all of Leon's allegedly defamatory statements were made to supervisors or co-employees (*id.* at Material Facts Nos., 5, 9), Leon's statements apparently constituted “communications made in a commercial setting relating to the conduct of an employee” and, as such, fall within the qualified “common interest” privilege under *Cuenca*.

Based on the above, Defendant Leon demonstrates the absence of a triable issue of fact as to whether her allegedly defamatory statements are protected by the common interest privilege. The common interest privilege is not only a defense to Plaintiff's first through fourth causes of action sounding in defamation, but also to Plaintiff's fifth and sixth causes of action for intentional and negligent infliction of emotional distress based on the allegedly defamatory statements. (See, e.g., *Deaile v. General Telephone Co. of Calif.* (1974) 40 Cal.App.3d 841, 848-850 [holding that the common interest privilege also defeated a claim for intentional infliction of emotional distress based on the alleged defamatory utterance].)

As a result, by demonstrating that the common interest privilege applies to her allegedly defamatory statements, Defendant Leon satisfies her initial burden of showing a complete defense to all six causes of action asserted against her in Plaintiff's Complaint.

Because Leon demonstrates that the common interest privilege applies, the burden shifts to Plaintiff to demonstrate a triable issue as to whether the common interest privilege applies to Leon's statements or whether Leon made the statements with “malice” so as to defeat the privilege. (See *Code of Civil Procedure* § 437c(p)(2), *Lundquist v. Reusser* (1994) 7 Cal. 4th 1193, 1208.) In the absence of any opposition, Plaintiff fails to satisfy his shifted burden. (See *Code Civ. Proc.*, § 437c, subd. (b)(3); also see *Buehler v. Alpha Beta Co.* (1990) 224 Cal.App.3d 729, 734–735; *Oldcastle Precast, Inc. v. Lumbermens Mut. Cas. Co.* (2009) 170 Cal.App.4th 554, 568; *Kojababian v. Genuine Home Loans, Inc.* (2009) 174 Cal.App.4th 408, 418.)

*3 Accordingly, Defendant Leon's request for summary judgment on Plaintiff's Complaint is granted.

Defendant's counsel is to prepare, serve and lodge a proposed judgment.

[end of tentative ruling]

Summary Judgment granted as to defendant Christie Leon.

Defendant's counsel is to prepare, serve and lodge a proposed judgment.

Notice to be given by Aaron N. Colby.