Cahill

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Second Department Provides Guidance on the Applicable Standard for a Matter of "Public Interest" Under New York's Anti-SLAPP Statute

New York's anti-Strategic Lawsuit Against Public Participation ("SLAPP") statute provides an accelerated dismissal procedure for claims that discourage participation in matters of public interest. To trigger the statute, a defendant must demonstrate that the plaintiff's action involves issues of "public petition and participation."[1] In 2020, the New York legislature expanded the definition of "action[s] involving public petition and participation" to include "any subject other than a purely private matter."[2] On November 20, 2024, in *Tsamasiros* v. *Jones*,[3] the Second Department continued a significant trend of New York courts borrowing from case law in the defamation context to determine what constitutes matters of "public interest" that trigger the protections of the anti-SLAPP statute.

I. Factual and Procedural Background

The Excelsior Sportsman's Club (the "Club") is a New York not-for-profit organization aimed at preserving fish and game in the State of New York. The Club owns approximately 1,700 acres of forest land and is a participant in the New York State Department of Environmental Conservation's Forest Tax Abatement program.[4] In September 2022, following a dispute between Davey Jones and Christos Tsamasiros (two members of the Club), Jones distributed a letter to Club members in response to allegations made by Tsamasiros that Jones's family abused their leadership position by violating the Club's bylaws and acting for personal monetary gain.[5] Jones's letter accused Tsamasiros of lying about Jones, not following the Club's bylaws himself, and threatening a Club member.[6] In December 2022, Tsamasiros sued Jones for defamation, alleging that Jones's September 2022 letter, and other oral communications made to Club members, contained false and misleading statements causing damage to Tsamasiros's reputation.[7] Jones moved to dismiss pursuant to CPLR 3016(a) and CPLR 3211(a) for failure to state a

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[1] N.Y. C.P.L.R. 3211(g)(1).

[2] N.Y. Civ. Rights Law §§ 76-a(1)(a)(1) and (1)(d).

[3] 2024 WL 4830755 (N.Y. App. Div. 2d Dep't Nov. 20, 2024).

[4] *Id.* at *1.

[5] *See id.*; *Tsamasiros* v. *Jones*, 2023 WL 2996934, at *2 (N.Y. Sup. Ct. Apr. 18, 2023).

[6] *Tsamasiros*, 2023 WL 2996934, at * 5.

[7] *Id.* at *1.

claim and under CPLR 3211(g)—New York's anti-SLAPP statute—asserting that the case involved public petition and participation.[8]

On April 18, 2023, the New York Supreme Court, Richmond County, (1) granted Defendant's motion to dismiss for failure to state a claim for defamation, given that the complaint failed to comply with CPLR 3016(a)'s pleading requirements and that Jones's allegedly defamatory statements were non-actionable statements of opinion, and (2) held that the anti-SLAPP statute did not apply, because the letter concerned a purely private matter and was directed only to a limited private audience, and thus denied Defendant's motion for an award of attorney's fees.[9] Both parties appealed.

II. The Second Department's Decision

On November 20, 2024, the Second Department affirmed, finding that the claim for defamation was properly dismissed as a non-actionable opinion and that the anti-SLAPP statute did not apply since the action did not concern "an issue of public interest."[10] The Second Department found that the anti-SLAPP statute did not apply because the letter at issue concerned a purely private matter, did not implicate any issues of broad public interest, and was directed to a limited private audience.[11]

Notably, in determining whether the action related to an issue of "public interest" under the anti-SLAPP statute, the Second Department cited to *Huggins* v. *Moore*,[12] a New York Court of Appeals case interpreting the meaning of "public concern" under New York law in determining the relevant standard of fault in the defamation context. Under New York defamation law, where the published content is "arguably within the sphere of legitimate public concern" and "reasonably related to matters warranting public exposition," a private plaintiff may recover if they can show that the publisher, in making the allegedly defamatory statement, acted in a "grossly irresponsible" manner.[13] In *Huggins* v. *Moore*, the New York Court of Appeals clarified the standard for "public concern," finding that an alleged defamatory statement does not touch a matter of public concern if it falls "into the realm of mere gossip and prurient interest" or is directed "only to a limited, private audience."[14] In addition, in *Huggins*, the Court of Appeals explained that courts should, in determining what constitutes a matter of public concern, consider the alleged defamatory statements "in the context of the writing as a whole, and not as disembodied words, phrases or sentences."[15]

By citing to *Huggins* and its progeny, the Second Department has continued a trend of New York Appellate Division courts looking to the "public concern" standard from defamation law to define matters of "public interest" for the purposes of triggering the protections of the anti-SLAPP statute. For instance, in *Aristocrat Plastic Surgery, P.C.* v. *Silva*, as a matter of first impression following the anti-SLAPP statute's 2020 amendments, the First Department cited *Huggins* in defining a matter of "public interest" under the anti-SLAPP statute, noting that "existing New York caselaw" in "instances involving other contexts—serves to define what constitutes a matter of public concern, and

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[8] *Id.*

[9] *Id.* at *4–9.

[10] *Tsamasiros*, 2024 WL 4830755, at *2–3.

[11] *Id.* at *3.

[12] 94 N.Y.2d 296 (1999).

[13] *See Chapadeau* v. *Utica Observer-Dispatch*, 38 N.Y.2d 196, 199 (1975).

[14] 94 N.Y.2d at 302–03.

[15] *Id.* at 302.

helps guide the analysis here."[16] Likewise, in *Nelson* v. *Ardrey*, the Second Department cited *Huggins* in finding that the anti-SLAPP statute did not apply to statements published on the plaintiffs' Facebook page, since the statements concerned a "purely private matter" and were "directed only to a limited, private audience."[17]

III. Implications

The court's decision in *Tsamasiros* is significant because it solidifies a trend of New York courts looking to the standard for "public concern" under defamation law—set forth in *Huggins* and its progeny—to define what constitutes a matter of "public interest" under New York's anti-SLAPP statute. *Tsamasiros* provides assurance for future anti-SLAPP litigants that they may consider the wealth of New York defamation case law defining a matter of "public concern" in determining whether the "gross irresponsibility" standard applies in crafting arguments about whether their case involves a matter of "public interest" triggering the protections of the anti-SLAPP statute.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Joel Kurtzberg (Partner) at 212.701.3120 or jkurtzberg@cahill.com; Jason Rozbruch (Associate) at 212.701.3750 or jrozbruch@cahill.com; or Chana Tauber (Associate) at 212.701.3520 or ctauber@cahill.com; or email publicationscommittee@cahill.com.

[16] 169 N.Y.S.3d 272, 275 (N.Y. App. Div. 1st Dep't 2022).

[17] 216 N.Y.S.3d 646, 650 (N.Y. App. Div. 2d Dep't 2024); *see also, e.g.*, *Zeitlin* v. *Cohan*, 197 N.Y.S.3d 211 (N.Y. App. Div. 1st Dep't 2023) (citing to *Huggins* to define "public interest" under the anti-SLAPP statute); *Carey* v. *Carey*, 160 N.Y.S.3d 854 (N.Y. Sup. Ct. 2022), *aff'd*, 198 N.Y.S.3d 12 (N.Y. App. Div. 1st Dep't 2023) (same).