EXHIBIT 14

Case No. 11 Civ 5843 (JPO)

DECLARATION OF JAY WARD BROWN IN SUPPORT OF DEFENDANTS' OPPOSTION TO PLAINTIFF'S MOTION TO DISMISS DEFENDANTS' COUNTERCLAIM

(*Adelphi University v. Committee to Save Adelphi*, N.Y.L.J., Feb. 6, 1997 (N.Y. Sup. Ct. Nassau Cty. 1997))

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Supreme Court

ADELPHI UNIVERSITY V. COMMITTEE TO SAVE **ADELPHI**

Justice Levitt

Plaintiffs herein move for an order pursuant to CPLR 3211(a)7, dismissing defendants' counterclaim and third-party complaint for its failure to state a cause of action.

Plaintiff Adelphi University ("Adelphi" or the "University") is a not for-profit institution "chartered under the laws of the State of New York." On December 21, 1995, Adelphi and its Board of Trustees instituted a lawsuit against the Defendants - certain faculty members at the University, an ad-hoc organization they had helped form "the Committee to Save Adelphi", and the Executive Director of that organization - alleging that they had published or "caused to be published" several defamatory statements charging University and Board officials with educational mismanagement, self-dealing and financial misconduct.

The Defendants' counterclaimed alleging that Adelphi is a "public permitee" within the meaning of N.Y. Civ. Rights Law Sect. 76-a(1)(b) holding a New York State charter; that Plaintiffs' defamation claims are "materially related" to Defendants' efforts to "report on, comment on, challenge or oppose" the Board's management of Adelphi under that charter; and that Plaintiffs' claims were brought "without a substantial basis in fact or law" and "for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting" Defendants' exercise of free speech.

While the Complaint specifies particular news articles which published the supposedly defamatory statements, it does not limit its allegations to statements made to the media, nor does it name as defendants any of the newspapers or television stations which published the statements.

The counterclaim asserts that the Board operates the University under "a permit, license, certificate or other entitlement" (its charter) received from the Department of Education. It alleges that "because of concerns over the administration of Adelphi ... (the Committee) undertook to report on, comment on, ... challenge or oppose" the University's operation under its state Charter, and that the defamation lawsuit was "materially related" to the Committee's efforts. In addition, makes clear that the Committee made its reports and comments not just to the media, but also by way of communicating to government bodies and appropriate agencies such as the New York State Department of Higher Education, New York State Board of Regents and the New York State Attorney General's Office. See Entertainment vs. Davis, 198 Ad2d 63.

The counterclaim alleges that, because the Plaintiffs' defamation claims were "commenced without a substantial basis in fact and law" and "for the sole purpose

of harassing, intimidating, punishing and otherwise maliciously inhibiting the (Committee's) free exercise of speech, petition and association rights," they fall within the ambit of the SLAPP Statute. (New York Civil Rights Law Sects. 70-a and 76-a, "Strategic Lawsuits Against Public Participation").

Defendants also have brought a third-party claim against individual members of the Board. The Complaint alleges that Defendants made defamatory statements but names only the University and the Board as plaintiffs, Defendants allege that "(P)laintiffs have raised the possibility of further defamation suits by individual trustees." They seek a declaratory judgment that these individuals have not been defamed.

While a declaratory judgment is indeed appropriate where itwill "serve some practical and in quieting, clarifying or stabilizing an uncertain or disputed jural relationship," Weinstein et al., New York Civil Practice, Sect. 3001.03 at 30-14 (Bender 1991), this must be read in the context of the long established rule, also acknowledged by Weinstein, that "courts are not empowered to render advisory opinions, or determine abstract, moot, hypothetical, remote or academic questions. As the Court of Appeals has said, the "courts may not issue judicial decisions that 'can have no immediate effect and may never resolve anything."' Cuomo v. Long Island Lighting Co., 71 N.Y. 2d 349, 354, 525 N.Y.S.2d 828, 830, 520 N.E.2d 546 (1988).

Accordingly, the declaratory judgment action is dismissed.

The SLAPP Statute is intended to prevent well-heeled public permit holders (or those seeking such permits) from using "the threat of personal damages and litigation costs ... as a means of harassing, intimidating or intimidating or punishing individuals, unincorporated associations... and others who have involved themselves in public affairs" by opposing them. See Citizen Participation Act, 1992 Consol. Laws, ch. 767 Sect. 1 (effective January 1, 1993). The defendants contend that the elements of the Statute are satisfiedto wit: the University operates as a "public permittee" under a New York State charter; Defendant Committee to Save Adelphi has challenged the authority of University officials and Board Member to act as they have under the charter; and the statements the Committee allegedly made - to both the press and state officials - were "materially related" to that challenge. See N.Y. Civ. Rights Law Sect. 76 a(1)(a).

It is the opinion of this Court that plaintiffs' defamation lawsuit, brought against an ad hoc group of university professors, students and alumni who have spoken against Plaintiffs' alleged improper management of the University, calls out for the Statute's protection.

On a motion to dimiss for failure to state a case of action, a counterclaim is to be liberally construed. One Acre, Inc. v. Town of Hempstead, 215 A.D. 2d 359, 626 N.Y.S. 2d 226 (2d Dep't 1995). All the factual allegations in the counterclaim must be deemed true, and the court must afford defendantsthe benefit of every possible favorable inference "without expressing (its) opinion as to whether (defendants) can ultimately establish the truth of their allegations before the trier of fact." Campaign for Fiscal Equity Inc. v. State of New York, 86 N.Y 2d 307, 318. The criterion is whether the counterclaim plaintiff has a cause of action and not whether he or she may ultimately be successful on the merits.

In passing the SLAPP Statute, the legislature recognized the dangerposed to the political process by "(t)he threat of personal damages and litigation costs (when) used as a method of stifling the participation of private citizens in public affairs." W. Bianchi and J. Marchi, "New York State Assembly Memorandum In Support

of Legislation." Even if a SLAPP suit such as Plaintiffs' is unsuccessful, it often accomplishes its purpose by chilling the exercise of First Amendment rights. A SLAPP suit is an "egregious abuse of the judicial process which violates the fundamental rights of those who become targets simply because they have exercised their right to petition." Hotel St. George Associates v. Morgenstern, 819 F. Supp. 310, 323 n. 14 (S.D.N.Y. 1993).

The SLAPP Statute allows a "defendant in an action involving public petition and participation ... (to) maintain an action, claim, cross claim or counterclaim to recover damages, including costs and attorney's fees, from any person who commenced or continued such action." N.Y.Civ. Rights Law Sect. 70 a(1). To qualify as "an action involving public petition and participation" a lawuit must be (a) "brought by a public applicant or permittee" (as defined in the statute); and (b) "materially related to any efforts of the defendant to report on, comment on, rule on, challenge or oppose such application or permission." N.Y. Civ. Rights Law Sect. 76-a(1)(a).

Once the existence of a SLAPP suit is established, the defendant in that suit- the victim of the SLAPP campaign - may recover (1) costs and attorney's fees by establishing that the suit "was commenced or continued without asubstantial basis in fact and law, and could not be supported by a substantial argument for the extension, modification or reversal of existinglaw" (N.Y. Civ. Rights Law Sect. 70-a(1)(a)); (2) other compensatory damages upon an additional showing that the action was "commenced or continued for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exerciseof speech, petition or association rights" (N.Y. Civ. Rights Law Sect. 70a(1)(b); and (3) punitive damages upon an additional showing that inhibiting free speech or association rights was the sole purpose of the suit. N.Y. Civ. Rights Law Sect. 70a(1)(c).

The Committee's counterclaim pleads all of these elements.

Both the Complaint and Answer establish that Adelphi has "obtained a permit ... license, certificate or other entitlement" from the State of New York to wit: a charter to operate the University, granted under N.Y. Educ. Law Sect. 216.

The Education Law charges the University of the State of New York and the Board of Regents with broad oversight responsibility for chartering and overseeing the State's colleges and universities. N.Y. Educ. Law Sects. 207, 216. Consequently, Adelphi's power to grant degrees is subject to the continuing permission of the Board of Regents.

A hearing by the Board of Regents has been held to determine whether Adelphi's Board should be removed.

In sum, Adelphi is a "public permittee" under N.Y. Civil Rights Law Sect. 76 a(1)(b), both because it has "obtained" a state charter and because it continues to be subject to state oversight.

Plaintiffs argue that Adelphi does not qualify as a "public permittee" because "no application, permission or license has been sought by plaintiffs"- in other words, because there is no application for a permit or license pending now. The SLAPP Statute is not so limited. It applies to those who have "obtained" a permit or license as well as those seeking one. Applying the statute's ordinary meaning, as we must, the Committee has satisfied the "public permittee" element of a SLAPP counter-claim. See Auerbach v. Board of Education of City School District, 86 N.Y. 2d 198, 204. ("Where the terms of a statute are clear and unambiguous, 'the court should construe it so as to give effect to the plain meaning of the words used"'

(citations omitted).

The alleged financial and other improprieties on which Defendants commented to various public officials in challenging the Board's management of the University are the subject matter of the alleged defamatory statements. See Complaint Sects. 10-11. Moreover, the counterclaim, which must be taken as true, alleges that Defendants commented on Plaintiffs' permission to act as an educational institution "by way of communicating to the New York State Department of Higher Education, New York State Board of Regents and the New State Attorney General's Office." The Statute is not limited to covering lawsuits brought by a public permittee concerning statements made directly to government agencies; it requires only that the statements which are the subject of the suit be "materially related" to defendants' opposition. N.Y. Civ. Rights Law Sect. 76a(1). In this case, Defendants' communications to the press were calculated to elicit public interest in Adelphi's alleged wrongful activities and pressure state regulators to act; they thus satisfy the "materially related" element of the SLAPP Statute. See Brownsville Golden Age Nursing Home, Inc. v. Wells, 839 F.2d 155, 160 (3d Cir. 1988) ("Thus, we hold that as a matter of law, defendants' actions in calling (plaintiff nursing home)'s violations to the attention of state and federal authorities and eliciting public interest (by communicating with local television reporter(s)) cannot serve as the basis of tort liability").

The SLAPP Statute's legislative history, shows that the Statute was intended to cover any lawsuit intended to chill the free speech rights of participants in a public debate regarding a public permit or application, whatever form that debate takes. The Statute's legislative sponsors also emphasized its broad scope, stating that "the bill is designed to protect citizens who participate in public affairs against lawsuits brought in retaliation against their participation."

Indeed, the very use of the phrase "public petition and participation" in the Statute indicates that the legislature intended to protect not juststatements made directly to a government agency in opposing a formal permit application (the "petition"), but also to statements made in the course of "participat(ing)" in the broad public debate about the issue. To limit the Statute to the former would render it virtually useless since almost every hotly contested public debate receives press coverage, and the ability of the participants in the debate to influence that coverage often determines the outcome.

If a "public applicant or permittee" is permitted to bring a baseless suit against an opponent for statements made in the press, the chilling effect on the public debate will be just as great - if not greater - than a suit based on statements made directly to the government. As long as the statements used upon were "materially related" to the opponent's efforts to "comment on" or "challenge" the public permit in issue, they fall within the SLAPP Statute, whether they were made to the government or the news media.

Accordingly, the SLAPP Counterclaim may not be dismissed on the ground that Plaintiffs' defamation action involves statements only to thepress and public.

The Committee's allegation that Plaintiffs' "SLAPP Suit was commenced for the sole purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition and association rights" is morethan adequate to survive dismissal at this early stage.

Because it satisfies the elements of the SLAPP Statute, the Committee's counterclaim should be upheld.

Therefore, for all the reasons stated above, plaintiffs' motion to dismiss the counterclaim is denied and plaintiff's motion to dismiss the third-party action for a declaratory judgment is granted.

Settle order on notice.

2/6/97 NYLJ 33, (col. 2)

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