STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2016 CA 1182

WAYNE J. STABILER, JR. AND THE LITTLE VILLAGE CWA, LLC

VERSUS

LOUISIANA BUSINESS, INC. (D/B/A "GREATER BATON ROUGE BUSINESS REPORT", "BUSINESSREPORT.COM", "DAILY-REPORT.COM", "DAILY REPORT AM" AND "DAILY REPORT PM"); STEPHANIE RIEGAL, ROBERT L. MILLER AND ROLFE MCCOLLISTER, JR.

Judgment rendered: SEP 26 2017

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number 639,382

Honorable R. Michael Caldwell, Judge

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BEFORE: WHIPPLE, C.J., GUIDRY, PETTIGREW, McCLENDON, AND CRAIN, JJ.

Whipple, C.J. dissents and assigns reasons.
Crain, J. concurs in part and dissents in part and assigns reasons.
Pettigrew, J. concurs in part and dissents in part and assigns reasons.
McClendon, J. concurs and assigns reasons.

GUIDRY, J.

A local restaurant business and its owner appeal a judgment dismissing their defamation claims against a local publishing company, its chairman, and one of its reporters pursuant to a special motion to strike under La. C.C.P. art. 971, known as Louisiana's Anti-SLAPP statute.[1]

FACTS AND PROCEDURAL HISTORY

On May 16, 2014, an online news article written by Stephanie Riegel was published on the Baton Rouge Business Report website about a jury's verdict in a tort suit between two companies, the Little Village CWA, LLC and CDR Properties, LLC. The original article, published in May 2014, was titled "Stabiler loses legal battle over damage at former home of Little Village." The article then went on to recount that "Restaurateur Wayne Stabiler will have to pay $15,000 in damages plus attorneys fees to the owners of the downtown building at 453 Lafayette St., which previously housed one of his most popular restaurants, The Little Village." The article further recounted that "The Little Village intentionally damaged the building in the process of moving out" and that the CDR Properties' suit alleged "The Little Village used sledgehammers, saws and wrecking bars to destroy a custom-built bar made from reclaimed cypress that had been in the restaurant." The article also contained a quote from Rob Miller, a member and owner of CDR Properties, stating "The jury decided that the restaurant intentionally damaged the property and awarded damages to us because of that."

In 2015, following the online publication of the above-referenced article, counsel for the Little Village CWA, LLC contacted Louisiana Business, Inc., the

[1] Article 971 belongs to the class of statutes known as "anti-SLAPP statutes" and applies in a very specific situation—when a litigant has brought a cause of action, typically alleging defamation, in an effort to chill the First Amendment speech of its target. Gebre v. City of New Orleans, 14-0904, p. 11 (La. App. 4th Cir. 10/7/15), 177 So. 3d 723, 732. SLAPP is an acronym for Strategic Lawsuits Against Public Participation. Thomas v. City of Monroe Louisiana, 36,526, p. 7 (La. App. 2d Cir. 12/18/02), 833 So. 2d 1282, 1286.

company that publishes the print and online editions of the Baton Rouge Business Report, to complain about certain statements made in the May 16, 2014 article. In light of the complaint, the article was revised to identify the corporate entity, The Little Village CWA, LLC, as the owner of The Little Village Restaurant and the party cast in judgment in the lawsuit filed by CDR Properties.[2] The quote by Miller, however, and the statements that CDR Properties' building was "intentionally" damaged using "sledgehammers, saws and wrecking bars" remained in the revised article that was substituted for the original article.

In May 2015,[3] Wayne J. Stabiler, Jr. and The Little Village CWA, LLC filed a petition for damages against Louisiana Business, Inc., Riegel, Miller, and Rolfe McCollister, the chairman of Louisiana Business, Inc., alleging that the named defendants were liable for defamation relative to statements made in the May 16, 2014 articles.[4] Answers were filed by the defendants generally denying any such liability. Thereafter, Louisiana Business, Inc., Riegel, and McCollister (collectively, the "LBI defendants") filed a special motion to strike pursuant to La. C.C.P. art. 971, which the plaintiffs opposed.

The trial court held a hearing on the special motion to strike on April 18, 2016. After hearing the argument of counsel, the trial court found:

> All trials, unless indicated otherwise, are open to the public and are public spectacles for lack of a better word, many of them, more so than others, but they are public issues.
>
> I think a jury trial in this court in which various people report upon becomes a public issue. The fact that it involves a dispute between two businesses here in the downtown Baton Rouge area makes it a public issue. I think Mr. Stabiler has made himself a public figure.... As a public figure he would, to prevail, have to show actual malice. There has been no allegation in the petition of actual malice

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[2] The revised article displays the following editor's note: "This story has been revised from a previously published version."

[3] The file stamp on the petition in the record before us shows a filing date of May 22, 2015; however, the parties acknowledge that the petition was fax filed on May 15, 2015.

[4] Although the record establishes that the revised article was actually published online in 2015, May 16, 2014 is posted as the date of the revised article as well.

> or there have been no allegations of – let me see the word I'm looking for – applied malice or inferred malice.

In so finding, the trial court granted the special motion to strike as to the LBI defendants, dismissing the plaintiffs' defamation suit against those defendants without prejudice, and awarded attorney fees in the amount of $3,500.00. The plaintiffs, Stabiler and The Little Village CWA, have appealed the May 3, 2016 judgment signed by the trial court encompassing those rulings. The LBI defendants have answered the appeal seeking an increase in the trial court's award of attorney fees and further seeking an additional award of attorney fees and costs for work performed on appeal.

DISCUSSION

The granting of a special motion to strike presents a question of law. Appellate review of a question of law is simply a review of whether the trial court was legally correct or legally incorrect. On legal issues, the appellate court gives no special weight to the findings of the trial court, but exercises its constitutional duty to review questions of law and renders a judgment on the record. Starr v. Boudreaux, 07-0652, pp. 3-4 (La. App. 1st Cir. 12/21/07), 978 So. 2d 384, 388.

In this appeal of the judgment granting the special motion to strike, the plaintiffs have raised two assignments of error. In their first assignment of error, the plaintiffs contend that the matter reported on by the LBI defendants was simply a private landlord-tenant dispute concerning damages, and there was nothing of public interest at issue on which to premise the special motion to strike and the award of attorney fees. We disagree.

Louisiana Code of Civil Procedure article 971 states, in pertinent part:

> A. (1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established a probability of

success on the claim.

(2) In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability of success on the claim, that determination shall be admissible in evidence at any later stage of the proceeding.

...

F. As used in this Article, the following terms shall have the meanings ascribed to them below, unless the context clearly indicates otherwise:

(1) "Act in furtherance of a person's right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue" includes but is not limited to:

...

(b) **Any written or oral statement or writing made in connection with an issue under consideration or review by a** legislative, executive, or **judicial body**, or any other official body authorized by law. [Emphasis added.]

Louisiana Code of Civil Procedure article 971 was enacted by 1999 La. Acts, No. 734, § 1. Section 2 of the Act provides:

> The legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for redress of grievances. The legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, it is the intention of the legislature that the Article enacted pursuant to this Act shall be construed broadly.

Hence, Article 971 was enacted by the legislature as a procedural device to be used in the early stages of litigation to screen out meritless claims brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for redress of grievances. Thinkstream, Inc. v. Rubin, 06-1595, p. 9 (La. App. 1st Cir. 9/26/07), 971 So. 2d 1092, 1100, writ denied, 07-2113 (La. 1/7/08), 973 So. 2d 730.

Pursuant to Article 971, a cause of action against a person arising from any act in furtherance of the person's right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established a probability of success on the claim. La. C.C.P. art. 971(A)(1). Under the shifting burdens of proof established by the article, the mover must first establish that the cause of action against him arises from an act by him in the exercise of his right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue. If the mover satisfies this initial burden of proof, the burden then shifts to the plaintiff to demonstrate a probability of success on the claim. Thinkstream, Inc., 06-1595 at p. 9, 971 So. 2d at 1100.

To meet their initial burden on the special motion to strike, the LBI defendants asserted that the articles in dispute were statements or writings made in connection with an issue under consideration or review by a judicial body, and thus the plaintiffs' defamation suit was subject to the special motion to strike pursuant to La. C.C.P. art. 971(F)(1)(b). In opposition, the plaintiffs argue that the May 16, 2014 articles do not fall under the purview of La. C.C.P. art. 971(F)(1)(b), primarily relying on the holding of the Louisiana Fifth Circuit Court of Appeal in Yount v. Handshoe, 14-919 (La. App. 5th Cir. 5/28/15), 171 So. 3d 381. In that case, the appellate court found the language of La. C.C.P. art. 971(F)(1)(b) to be ambiguous and interpreted the provision regarding statements made in connection with a matter under review or consideration by a governmental body to also require that the proponent establish that the statements were made in connection with a public issue. See Yount, 14-919 at p. 12, 171 So. 3d at 389.

In a recent, unpublished decision handed down by this Court, however, another panel expressed disagreement with the Yount opinion. Additionally, the

panel recognized that this court "has already found in **Gibbs v. Elliott**, that the plain language of Article 971(F)(1)(a) and (b) provides that an act 'in connection with a public issue' includes '[a]ny written ...[s]tatement or writing made before a ... judicial proceeding' or 'made in connection with an issue under consideration or review by a ... judicial body.'" Aloise v. Capital Management Consultants, Inc., 16-1174, p. 7 (La. App. 1st 4/12/17), 2017 WL 1378223, at *4 (unpublished opinion)(quoting Gibbs v. Elliott, 12-2121, p. 6 (La. App. 1st Cir. 9/13/13), 186 So. 3d 667, 672).

We likewise agree with the holdings of this Court regarding the interpretation of La. C.C.P. art. 971(F)(1)(b). Therefore, we find that because the statements in the May 16, 2014 articles were in connection with a judicial proceeding, the statements at issue satisfy the LBI defendants' initial burden under Article 971, thereby shifting the burden to the plaintiffs to demonstrate a probability of success on their defamation action. See Aloise, 16-1174 at p. 8, 2017 WL 1378223, at *4-5.

In their second assignment of error, the plaintiffs basically assert that the trial court erred in finding that they did not meet their burden of demonstrating a probability of success on their defamation action because the record shows that the statements made in the May 16, 2014 articles were made in reckless disregard of the truth sufficient to show actual malice.

The Louisiana Supreme Court has recognized that the legacy of United States Supreme Court decisions regarding defamation is that "the protections afforded by the First Amendment supercede the common law presumptions of [malice], falsity, and damages with respect to speech involving matters of public concern, at least insofar as media defendants are concerned." Starr, 07-0652 at p. 7, 978 So. 2d at 390 (quoting Kennedy v. Sheriff of East Baton Rouge, 05-1418, p.

8 (La. 7/10/06), 935 So. 2d 669, 677). Accordingly, our supreme court has recognized that in actions against a media defendant involving an issue of public concern, the presumptions of falsity, malice, and injury do not apply. Starr, 07-0652 at p. 7, 978 So. 2d at 390 (citing Kennedy, 05-1418 at pp. 8-9, 935 So. 2d at 677). Hence, in cases involving statements made on an issue of public concern against a media defendant or statements made about a public figure, a plaintiff must prove all elements of his cause of action for defamation, including actual malice. Starr, 07-0652 at pp. 7-8, 978 So. 2d at 390. Actual malice is generally established by a showing that the defendant either knew the statement was false or acted with reckless disregard for the truth. Starr, 07-0652 at p. 6, 978 So. 2d at 390 (citing Costello v. Hardy, 03-1146, p. 14 (La. 1/21/04), 864 So. 2d 129, 141).

Thus, in order to maintain a cause of action for defamation in a matter of public concern[5] involving a media defendant or involving a public figure, a plaintiff must prove: (1) defamatory words; (2) publication; (3) falsity; (4) malice, actual or implied; and (5) resulting injury. If any one of these required elements is lacking, the cause of action fails. Starr, 07-0652 at p. 5, 978 So. 2d at 389.

The LBI defendants recognized the error in the original article that incorrectly identified Stabiler as the defendant in the CDR Properties suit and the party liable to pay the damages awarded to CDR Properties. Accordingly, they revised the article to reflect that The Little Village CWA was the defendant in the suit and the party liable for damages. As Riegel explained, she wrote the May 16, 2014 article on the day the jury's verdict was reached "based on the information available at the time and a statement by an individual known to have intimate

[5] The United States Supreme Court has defined matters of "public concern" as speech "relating to any matter of political, social, or other concern to the community." Starr, 07-0652 at p. 9, 978 So. 2d 391 (quoting Connick v. Myers, 461 U.S. 138, 146, 103 S.Ct. 1684, 1690, 75 L.Ed.2d 708 (1983)). By their own evidence, presented in opposition to the special motion to strike, the plaintiffs established that the lawsuit between CDR Properties and The Little Village CWA was a matter of concern to the community. As stated in the affidavits of Stabiler and various employees of the Little Village Restaurant, "many customers" asked Stabiler and the restaurant staff about the information conveyed in the May 16, 2014 articles.

knowledge of the litigation, Mr. Miller." She stated "[n]o other information was available on the jury verdict at the time." She further explained that the story was written as a follow up to an article she had previously published on January 20, 2014, announcing that jury selection had begun in the litigation between CDR Properties and The Little Village.

After being contacted by counsel for Stabiler and The Little Village CWA, Riegel stated that the title of the original article was corrected and the body of the article was revised "to reflect the correct corporate name of the business." As to the statement by Miller contained in the article, Riegel stated "LBI refused to remove Mr. Miller's statement as it was a statement made by an individual who was present during the trial and it was made based upon his perception of the proceedings." No explanation was provided for why the other statements, regarding the building being "intentionally" damaged and the use of sledgehammers, saws, and wrecking bars, were not removed.

Initially, we observe that jurisprudence has held that where false statements were initially published based on information known at the time, but later retracted once the party became aware of the falsity, claims of defamation have not been sustained. See Johnson v. KTBS, Inc., 39,022, pp. 7-8 (La. App. 2d Cir. 11/23/04), 889 So. 2d 329, 334, writ denied, 04-3192 (La. 3/11/05), 896 So. 2d 68; Henderson v. Richardson, 26,526, pp. 4-5 (La. App. 2d Cir. 1/25/95), 649 So. 2d 134, 136, writ denied, 95-0732 (La. 4/28/95), 653 So. 2d 599. In the matter before us, the LBI defendants did retract the information regarding Stabiler personally, but refused to retract any of the other information contained in the article that the plaintiffs also assert is false. Thus, we must consider the remaining contested information that was left in the revised article by the LBI defendants to determine whether the plaintiffs met their burden of demonstrating a probability of success on

their defamation claim.

The question of whether a communication is capable of a particular meaning and whether that meaning is defamatory is ultimately a legal question for the court. Starr, 07-0652 at p. 5, 978 So. 2d at 389. In the instant matter, the plaintiffs claim that in addition to the quoted statement from Miller, the following statements contained in the revised article were defaming: "A jury in 19th Judicial District Court awarded the damages Thursday to CDR Properties, which ***alleged in a 2010 lawsuit that The Little Village intentionally damaged the building*** in the process of moving out when it relocated to the nearby Kress Building," and "[***t***]***he suit alleged The Little Village used sledgehammers, saws and wrecking bars*** to destroy a custom-built bar made from reclaimed cypress that had been in the restaurant." (Emphasis added.) Further, Miller was quoted in the article as stating "[t]he jury decided that ***the restaurant intentionally damaged*** the property and awarded damages to us because of that." (Emphasis added.)

As previously discussed, the LBI defendants appear to rely on the fact that even if false, it cannot be shown that the information was negligently published so as to support the plaintiffs' defamation action, because, as they assert, they published the article based on the information known and available to them at the time. Even if this argument is sustainable with respect to the original article, the record shows that the revised article was published several months after the jury's verdict had been handed down and after the LBI defendants had been informed of the alleged inaccuracies of statements contained in the article, which was at a time when the entire record in the proceedings should have been available. Hence, to the extent the evidence submitted by the plaintiffs indicates that the statements maintained in the revised article are false, then the LBI defendants' failure to verify the statements against the available record would be sufficient to

demonstrate that the LBI defendants published the statements in reckless disregard of the truth.

The original and the supplemental and amending petitions from the CDR Properties' lawsuit reveal no allegations of The Little Village damaging property using any sledgehammers, saws, or wrecking bars, although in the supplemental and amending petition, it is alleged that "Defendant deliberately cut the [w]ires connected to the fire alarm system disabling same." Further, even in statements attributed to Miller, there is no mention of the use of sledgehammers, saws, or wrecking bars. As neither the petitions nor Miller appear to have asserted any claims of sledgehammers, saws, and wrecking bars being used by The Little Village, it is unclear on what authority Riegel relied to assert that such allegations were made in the lawsuit in both the original and revised articles.

Moreover, while only the petitions, rather than the entire suit record, were submitted in connection with the hearing on the motion to strike, we find this evidence was sufficient to sustain the plaintiffs' burden of establishing a probability of success on their claim of defamation. In particular, we observe that the statements from the articles that the plaintiffs highlight as being false and defaming each contain the word "allege." In civil proceedings, allegations of fact are made in pleadings. See La. C.C.P. art. 854 ("All allegations of fact of the petition, exceptions, or answer…") and comment (a) thereunder. And while the concept of expansion or enlargement of the pleadings does exist, such concept is premised on unchallenged evidence presented at trial rather than the presentation of new allegations. See Comment (b) under La. C.C.P. art. 854 ("In Louisiana[,] it is well settled that the pleadings are enlarged by **evidence** adduced without objection[,] which is not pertinent to any of the issues raised by the pleadings, and hence would have been excluded if objected to timely" (emphasis added)). Thus,

we find the evidence submitted by the plaintiffs was sufficient to show the statement regarding the allegation that "The Little Village used sledgehammers, saws, and wrecking bars" was false.

Accordingly, we find that the plaintiffs met their burden of demonstrating a probability of success on their defamation claim as to the Little Village CWA, LLC sufficient to defeat the special motion to strike. The record shows the plaintiffs established the falsity of the published statement contained in the revised article. The record further shows the plaintiffs established that the LBI defendants published the false statement with actual malice - that is, in reckless disregard of the truth premised on their failure to verify the statements in the revised article against court records that were clearly available at the time the revised article was published. Proof of actual malice in this instance is underscored by the fact that the LBI defendants were advised by the plaintiffs of the falsity, yet they refused to correct the statement or even attempt to verify the accuracy of the statement, which was not attributable to Miller nor contained in the petitions of the lawsuit that were available in the public record.

CONCLUSION

For the foregoing reasons, we reverse the judgment granting the LBI defendants' special motion to strike in part and vacate the trial court's award of attorney fees to those defendants. Consequently, we remand this matter to the trial court for assessment and apportionment of reasonable attorney fees and costs against the LBI defendants[6] and the plaintiffs in light of our judgment ruling partially in favor of the plaintiffs and for further proceedings. And further as a consequence of our determinations on appeal, we deny the LBI defendants' answer to the appeal. All costs of this appeal are cast one-half to the appellants, Wayne

[6] Louisiana Code of Civil Procedure article 971(B) provides, in pertinent part, that "a prevailing party on a special motion to strike shall be awarded reasonable attorney fees and costs."

Stabiler and the Little Village CWA, LLC, and the other half to the appellees, Louisiana Business, Inc., Rolfe McCollister, and Stephanie Riegel.

REVERSED IN PART, VACATED IN PART, AND REMANDED; ANSWER TO APPEAL DENIED.

WAYNE J. STABILER, JR. AND THE LITTLE VILLAGE CWA, LLC	**STATE OF LOUISIANA**
	COURT OF APPEAL
VERSUS	**FIRST CIRCUIT**
LOUISIANA BUSINESS, INC. (D/B/A "GREATER BATON ROUGE BUSINESS REPORT", "BUSINESS REPORT.COM", "DAILY-REPORT.COM", "DAILY REPORT AM" AND "DAILY REPORT PM"); STEPHANIE RIEGAL, ROBERT L. MILLER AND ROLFE McCOLLISTER, JR.	**NUMBER 2016 CA 1182**

WHIPPLE, C.J., dissenting.

I agree with the majority insofar as the majority concludes that the LBI defendants demonstrated that the published statements at issue in this case constitute constitutionally protected free speech. The statements are statements of opinion or interpretation of the meaning or basis of a jury's verdict as related to an earlier damage lawsuit. Thus, I agree that the contested statements were "made in connection with an issue under consideration ... by a judicial body." LSA-C.C.P. art. 971(F)(1)(b).

Moreover, in my view, the published statements are a matter of public concern. LSA-C.C.P. art. 971(F)(1)(c). The United States Supreme Court has defined matters of "public concern" very broadly, i.e., as speech "relating to any matter of political, social, or other concern to the community." Connick v. Myers, 461 U.S. 138, 146, 103 S. Ct. 1684, 1690, 75 L. Ed. 2d 708 (1983). A local prominent restaurant owner's business practices are a matter of public concern and involve issues in which "the local community would reasonably be expected to have a legitimate interest." Starr v. Boudreaux, 2007-0652 (La. App. 1st Cir. 12/21/07), 978 So. 2d 384, 391 ("Clearly, the articles discussing the removal of a local radio station from the airwaves, which was an important source for local

news, talk, and weather, relates to a matter of public concern and is an issue about which the local community would reasonably be expected to have a legitimate interest.")

As noted by the majority, since the LBI defendants demonstrated that the statements at issue herein constitute constitutionally protected free speech, the burden then shifted to plaintiffs to demonstrate a probability of success on their defamation claim in order to defeat the motion to strike. Aloise v. Capital Management Consultants, Inc., 16-1174, p. 7 (La App. 1st Cir. 4/12/12) (unpublished). Moreover, to satisfy this burden of proof in a case involving a matter of public concern and a media defendant, the plaintiffs were obligated to prove: (1) defamatory words; (2) publication; (3) falsity; (4) malice, actual or implied; and (5) resulting injury. Starr, 978 So. 2d at 389.

Accordingly, I respectfully dissent from of the majority's determination that plaintiffs met their burden of demonstrating a probability of success on their defamation claim as to the Little Village CWA, LLC sufficient to defeat the granting of the LBI defendants' special motion to strike. Specifically, on the record before us, I am unable to find that plaintiffs demonstrated the falsity of the challenged statements.

Plaintiffs allege that they were defamed by the published newspaper article insofar as the article reported that: (1) the CDR Properties lawsuit alleged that the Little Village intentionally damaged the building; (2) the CDR Properties lawsuit alleged that the Little Village used sledgehammers, saws, and wrecking bars to destroy a bar; and (3) the jury decided that the restaurant intentionally damaged the property and awarded damages because of that.

With regard to the allegation of intentional damaging, the supplemental and amended petition filed in the underlying CDR Properties lawsuit did allege that

"[d]efendant [the Little Village] deliberately cut the [w]ires connected to the fire alarm system disabling the same." While this allegation states "deliberately" and not "intentionally," I am unable to find a material difference between these two words. Thus, in my view, plaintiffs did not demonstrate the probability of the falsity of the published statement that the CDR Properties lawsuit alleged that the Little Village "intentionally damaged the building."

Moreover, while the petition(s) in the underlying CDR Properties lawsuit may not have specifically alleged that the Little Village used "sledgehammers, saws, and wrecking bars" in the damaging or destruction of the property, this does not establish the **probability of the falsity** of this statement. As noted by the majority, it is well-settled law that pleadings are enlarged by evidence adduced at trial without objection. And, as pertinent hereto, plaintiffs did not introduce the trial transcript from the underlying damage lawsuit into the record of the instant proceedings. Accordingly, we are unable to discern whether, at the trial of the underlying matter, evidence of the use of "sledgehammers, saws, and wrecking bars" was introduced. On the record before us, we simply do not know. As stated by the majority, it was plaintiffs' burden of proof to establish the **probability of the falsity** of the statements. Without the transcript of the underlying damage lawsuit, there is nothing before us to determine the probability of the falsity of the published statement reporting allegations of the Little Village's use of sledgehammers, saws, and wrecking bars.

Additionally, plaintiffs failed to prove the **probability of the falsity** of the published statement regarding "[t]he jury decided that the restaurant intentionally damaged the property and awarded damages [to be paid by the Little Village] because of that." The jury verdict form that is part of the record demonstrates that the jury in the underlying suit found that the Little Village had "an obligation to

pay any damage claimed by CDR Properties" in the amount of $15,000.00. As stated above, the amended petition undisputedly alleged "deliberate" damage, which supports the claim that there was intentional damage established at the underlying trial. Thus, in my view, plaintiffs have failed to demonstrate the falsity of this challenged statement, which was essentially nothing more than the reporting of an opinion or comment interpreting the basis of the jury's verdict.

Finally, I am unable to find that the plaintiffs demonstrated the probability of malice, actual or implied, by the LBI defendants in publishing the subject newspaper article, particularly given the fact that the LBI defendants later corrected the publication to reflect the actual named defendant in the CDR Properties lawsuit. In my view, the LBI defendants acted within their rights in reporting the information that was reported to them and made available at the time of the report. As succinctly stated by the LBI defendants, "[r]eporting on the results of litigation has long been one of the basic obligations of a free press." Indeed, the ability to have open and public discourse, including the expression of opinions as to the meaning, basis, and merits of a legal claim or result in a legal proceeding, is a fundamental tenet and hallmark of a democracy.

In my view, maintaining either plaintiff's defamation claim against the LBI defendants would have a crippling effect on free speech. In sum, such an approach would subject a person to damages any time that person discussed or opined on a jury's verdict or the basis of the same. This is precisely why anti-SLAPP laws were enacted.

For these reasons, I respectfully dissent.

WAYNE J. STABILER, JR. AND THE LITTLE VILLAGE CWA, LLC

VERSUS

LOUISIANA BUSINESS, INC. (D/B/A "GREATER BATON ROUGE BUSINESS REPORT", "BUSINESS REPORT.COM", "DAILY-REPORT.COM", "DAILY REPORT AM" AND "DAILY REPORT PM"); STEPHANIE RIEGAL, ROBERT L. MILLER AND ROLFE McCOLLISTER, JR.

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CRAIN, J., concurs in part and dissents in part.

I concur with the majority's conclusion that the relevant published statements are constitutionally protected free speech, because they were "made in connection with an issue under consideration... by a judicial body." La. Code Civ. Pro. art. 971(F)(1)(b). However, for the reasons assigned by Chief Judge Whipple relative to the plaintiffs' failure to meet their burden of proof under Article 971, I dissent from the remainder of the majority opinion.

WAYNE J. STABILER, JR. AND
THE LITTLE VILLAGE CWA, LLC

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LOUISIANA BUSINESS, INC. (D/B/A "GREATER BATON ROUGE BUSINESS REPORT", "BUSINESSREPORT.COM", "DAILY-REPORT.COM", "DAILY REPORT AM" AND "DAILY REPORT PM"); STEPHANIE RIEGAL, ROBERT L. MILLER AND ROLFE MCCOLLISTER, JR.

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STATE OF LOUISIANA

BEFORE: WHIPPLE, C.J., GUIDRY, PETTIGREW, McCLENDON, AND CRAIN, JJ.

PETTIGREW, J., CONCURS IN PART AND DISSENTS IN PART, AND ASSIGNS REASONS.

I concur with the majority on reversing the trial court's grant of a special motion to strike in favor of defendants as to The Little Village CWA, LLC claim. I dissent with the majority's affirmance as to the trial court's grant of the special motion to strike in favor of defendants as to Wayne Stabiler, Jr.'s claim. I am of the opinion that Stabiler's claim against defendants does not fall within the scope of La. Code of Civil Procedure art. 971.

Stabiler was not a party to the lawsuit between The Little Village CWA, LLC and CDR Properties, LLC that the defendants' online news article of May 16, 2014, was reporting on. False statement about him in said article was gratuitously added to the article, even though he was not a party. At the time of that news article on May 16, 2014, Stabiler was not a public figure and was not involved with any issue of public concern. The alleged retraction by the defendants did not occur until at least eight months after the original article, after which the damage had already been done.

I am of the opinion the facts of this case are distinguishable from the case of Michael Aloise, Jr. v. Capital Management, 2016 CA 1174. I would reverse the judgment of the trial court granting the special motion to strike of the defendants, and remand the matter for further proceedings.

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FIRST CIRCUIT

2016 CA 1182

WAYNE J. STABILER, JR. AND THE LITTLE VILLAGE CWA, LLC

VERSUS

LOUISIANA BUSINESS, INC. (D/B/A "GREATER BATON ROUGE BUSINESS REPORT", "BUSINESSREPORT.COM", "DAILY-REPORT.COM", "DAILY REPORT AM" AND "DAILY REPORT PM"; STEPHANIE RIEGAL, ROBERT L. MILLER AND ROLFE MCCOLLISTER,JR.

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McCLENDON, J., concurring.

Given that the record before us is devoid of any basis for the source of the comment that "The Little Village used sledgehammers, saws and wrecking bars to destroy a custom-built bar" in the restaurant, I concur in the result reached by the majority.