

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

MURPHY J. PAINTER

NO. 2018 CW 1289
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VERSUS

STATE OF LOUISIANA, THROUGH THE OFFICE OF THE GOVERNOR, THE DEPARTMENT OF REVENUE AND TAXATION, ALCOHOL TOBACCO CONTROL COMMISSION, CYNTHIA BRIDGES, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE DEPARTMENT OF REVENUE AND TAXATION, THE OFFICE OF STATE INSPECTOR GENERAL, AND STEPHEN STREET, IN HIS OFFICIAL CAPACITY AS STATE INSPECTOR GENERAL

DEC 26 2018

In Re: Shane Evans, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 604308.

BEFORE: GUIDRY, THERIOT, AND PENZATO, JJ.

WRIT GRANTED IN PART WITH ORDER; DENIED IN PART. The district court's May 21, 2018, judgment denying Shane Evans' Special Motion to Strike is hereby reversed in part. "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." La. Code Civ. P. art. 971(A)(1). If the mover on a special motion to strike makes a prima facie showing that his comments were constitutionally protected and in connection with a public issue, the burden shifts to the plaintiff to demonstrate a probability of success on the claim. **Shelton v. Pavon**, 2017-0482 (La. 10/18/17), 236 So.3d 1233, 1237. Murphy J. Painter alleged two causes of action arising from statements Shane Evans made in a search warrant application and his Office of Inspector General investigative report in furtherance of his First Amendment rights and in connection with a public issue: defamation and deprivation of a Fourteenth Amendment right. Thus, the burden shifted to Murphy J. Painter to demonstrate likelihood of success on the merits of these two claims. In his opposition to Shane Evans' Special Motion to Strike, Murphy J. Painter failed to timely submit any evidence in support of his Opposition to Shane Evans' Special Motion to Strike. "[A]rgument of counsel and briefs, no matter how artful, are not evidence." **Regan v. Caldwell**, 2016-0659 (La. App. 1st Cir. 4/7/17), 218 So.3d 121, 128, writ denied, 2017-0963 (La. 4/6/18), 239 So.3d 827. Failure to produce supporting affidavits or otherwise competent evidence is insufficient to overcome a special motion to strike. **Id.** Therefore, Murphy J. Painter failed to demonstrate a likelihood of success on the merits as to his defamation and Fourteenth Amendment claims against Shane Evans. As such, Shane Evans' Special Motion to Strike is hereby granted as to these claims, and they are

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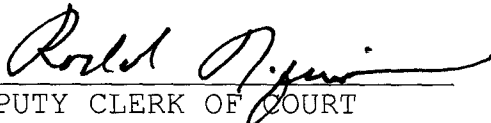
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dismissed with prejudice. Murphy J. Painter's Fourth Amendment and abuse of process claims do not arise from any act of Shane Evans in furtherance of his right of petition or free speech and therefore are not subject to a special motion to strike. Shane Evans' Special Motion to Strike is therefore denied as to these claims.

Louisiana Code of Civil Procedure article 971(B) provides that a prevailing party on a special motion to strike shall be awarded reasonable attorney fees and costs. This matter is remanded to the district court for a determination of the amount of reasonable attorney fees and costs to be awarded to defendant, Shane Evans.

JMG
MRT
AHP

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DEPUTY CLERK OF COURT
FOR THE COURT