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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
BEFORE THE HONORABLE DAVID A. GARCIA, JUDGE
DEPARTMENT NO. 10

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LANDMARK EDUCATION CORPORATION,)	
)	
PLAINTIFF,)	
)	
VS.)	NO. 989890
)	
STEVEN PRESSMAN, et al.,)	
)	
DEFENDANTS.)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
TUESDAY, NOVEMBER 18, 1997

REPORTED BY: JOSEPH HAYDEN VICKSTEIN, CSR #4780

1 A P P E A R A N C E S:

2 For the Plaintiff:

3 Law Offices of ROPERS, MAJESKI, KOHN & BENTLEY
4 By: CAROL P. LAPLANT, Attorney at Law
5 670 Howard Street
6 San Francisco, Ca 94105

6 For the Defendant:

7 GENESIS LAW GROUP, LLP
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10 San Jose, Ca 95113

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1 TUESDAY, NOVEMBER 18, 1997

Morning Session

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3 THE CLERK: Line 27, Landmark Education
4 Corporation versus Pressman.

5 MR. CHADWICK: Good morning, Your Honor. James
6 Chadwick appearing specially for Judy Alexander on behalf of
7 Steven Pressman.

8 MS. LAPLANT: Carol Laplant appearing for Landmark
9 Education Corporation, Plaintiff and Moving Party. I
10 submitted on the tentative and I believe it's quite
11 appropriate.

12 MR. CHADWICK: Your Honor, since I don't know the
13 rationale for the tentative, I can only speculate. But it
14 seems to me that there is no dispute that indeed Landmark
15 concedes that Mr. Pressman's entitled to respond to the
16 Complaint, and that he's entitled to do that in the way that
17 he sees fit. That's not in dispute.

18 If he's entitled to respond to the Complaint, it
19 seems to me that he is entitled to a hearing on his
20 response.

21 THE COURT: And he will get a hearing.

22 MR. CHADWICK: But if there's to be a hearing on
23 the Motion to Strike pursuant to the anti-SLAPP statute and
24 on the demurrer, it seems to me that it makes sense for both
25 those matters and the motion for the order compelling
26 testimony, to be heard and decided at the same time.

27 So I was here to propose that all these matters be
28 consolidated for hearing by the same judge, at the same

1 time. And that a briefing schedule be established to
2 accommodate that.

3 MS. LAPLANT: Your Honor, that was not proposed in
4 the papers, and I don't think it's a good solution to the
5 situation, because there is a very large --

6 THE COURT: There is litigation ongoing presently
7 in Illinois, is there not?

8 MS. LAPLANT: There is, yes.

9 THE COURT: And ultimately I suppose if there's a
10 real, if there's a SLAPP lawsuit to be maintained, it's
11 there in Illinois. Though as I understand it, Mr. Pressman
12 is not a Defendant in Illinois. He's merely a witness to
13 events in Illinois.

14 MS. LAPLANT: That's correct.

15 THE COURT: Now, whether or not he is entitled to
16 take the privilege, seems to me to be a discovery matter
17 that ought to be resolved by the Discovery Commissioner.
18 And it is at least conceivable that the Discovery
19 Commissioner will sustain his exercise of the privilege.
20 The matter will come here. And the matter, as a Motion to
21 Strike, is in essence moot because he's been sustained from
22 a privilege standpoint.

23 But the question whether or not he is he obligated
24 to respond to discovery seems to me, at the center of this
25 litigation. And that ultimately ought to be resolved --

26 MR. CHADWICK: Well, it seems to me --

27 THE COURT: -- in the appropriate way.

28 MR. CHADWICK: Your Honor, excuse me.

1 THE COURT: And it should not be resolved by this
2 Court, by this Court's arrogating to itself what is a
3 discovery issue through the guise of CCP Section 425.16.

4 You know, the real problem ultimately is, is that
5 under 425.16, they are not entitled to engage in any
6 discovery, as soon as you make that motion.

7 And we know from reading the case law that what
8 they have asked this Court to do is precisely what they are
9 obligated to do if they want to engage in any discovery
10 before they deal with the issue of CCP Section 425.16.

11 You know, so it is an interrelated issue. But I
12 see this as fundamentally a discovery issue. And that's the
13 reason I have ruled the way I have.

14 MR. CHADWICK: Your Honor, if I can say so,
15 obviously the application of the shield law to the facts
16 presented here is a matter of law. It doesn't have to be
17 decided as a discovery matter. It could be --

18 THE COURT: Except, it may be that I could decide
19 it, Counsel. But again, I already said, I am not going to
20 arrogate that responsibility unto myself.

21 We set up a system here in San Francisco whereby
22 discovery matters are resolved through the Discovery
23 Commissioner. And the Superior Court, I sitting as Law &
24 Motion judge, am not going to take on the responsibility
25 that we delegated elsewhere.

26 MR. CHADWICK: Well, Your Honor, since the
27 application of the anti-SLAPP statute, and the ability of
28 the Plaintiff to prevail is a matter that has to be

1 determined under the anti-SLAPP statute, and cannot be
2 reached by the Discovery Commissioner. It seems to me that
3 no --

4 THE COURT: That's the ultimate issue. That's the
5 ultimate issue. But ultimately the question is the
6 application. And in either forum, the application is the
7 application of the newsperson's privilege, if you will.
8 That's at the center of it.

9 Because if you are correct, then they have no
10 basis for enforcing any request for discovery, because
11 fundamentally, of the newsperson's privilege. Because
12 that's the way you can say to this Court that there is no
13 probability of success on their part. So I first would have
14 to decide whether or not this matter is a matter which is
15 actually contemplated by CCP Section 425.16.

16 I would point out that Mr. Pressman has not been
17 sued for any exercise of free speech.

18 MR. CHADWICK: I completely disagree with that,
19 Your Honor.

20 THE COURT: Has he been sued here for an exercise
21 of free speech?

22 MR. CHADWICK: This is the essence --

23 THE COURT: This is an attempt to learn
24 information from him.

25 MR. CHADWICK: This is an attempt to compel him to
26 testify about information that is protected by the First
27 Amendment.

28 THE COURT: That's different. Is it not? That's

1 a privilege issue. Discovery Commissioners deal with
2 privilege issues all the time.

3 MR. CHADWICK: Well, Your Honor, it seems to me
4 that at the very least, what we are looking at is a
5 situation here where I believe that both the merits of the
6 anti-SLAPP motion and the demurrer and the Motion to Compel
7 would have to be resolved in order for Mr. Pressman to
8 perfect an appeal.

9 And therefore, it seems to me that all these
10 matters have to be resolved, in one way or another, before
11 anything goes forward.

12 Now, I believe, and despite the representations of
13 counsel for the Plaintiff, I am not disparaging the
14 abilities of the Discovery Commissioner at all. I believe
15 we will prevail before the Discovery Commissioner.

16 But, I also believe that this is essentially a
17 SLAPP suit. That its main purpose is to harass. And I
18 believe that I am entitled on behalf of Mr. Pressman to a
19 determination of the merits on of that motion.

20 And in order to get a determination on the merits,
21 that matter has to be heard and decided before the ultimate
22 culmination of this. If there is, and I don't believe there
23 will be, but if there is a Motion to Compel Mr. Pressman's
24 testimony that results from this Motion to Compel, what then
25 will Mr. Pressman's remedy be in order to obtain a
26 determination and perfect an appeal?

27 MS. LAPLANT: We don't object to the hearing of
28 the anti-SLAPP motion. And we don't object to the hearing

1 of the demurrer. We are simply saying that it suits
2 everybody's purposes to hear the discovery matter first in
3 the Discovery Department.

4 And then if Mr. Pressman wants to proceed with his
5 motion, and risk liability for our attorneys' fees, he can
6 put it on calendar then and that's our proposal. After the
7 discovery hearing is concluded, his motion can go back on
8 calendar.

9 MR. CHADWICK: Essentially it seems to me that
10 what counsel for Landmark is arguing for is essentially what
11 they claimed they were trying to avoid, which is two
12 hearings on the same issue. Why not have everything heard
13 by the same judge at the same time?

14 MS. LAPLANT: Well, as far as we are understand,
15 once the discovery matter has been heard by the Discovery
16 Commissioner, there is no need for Law & Motion to
17 reconsider the same material.

18 MR. CHADWICK: Now, do we --

19 THE COURT: Wait a second. You are talking to me,
20 okay?

21 MR. CHADWICK: Do we get a hearing or don't we?

22 THE COURT: I don't know. It depends upon what
23 the posture is. I have already said, all they have asked me
24 to do is to continue the hearing on the demurrer and the
25 Motion to Strike and relief from the stay. And I have said
26 "granted."

27 So we will give you a hearing date for the
28 demurrer and the Motion to Strike. We will deal with that.

1 As she says, if you want to press it -- if you prevail
2 before the Commissioner, you have prevailed before the
3 Commissioner. Then the question becomes whether or not I
4 suppose I should hear this.

5 I still will -- you know, it is conceivable that
6 you prevail before the Commissioner, you come in here and
7 ask for the matter to be stricken on the grounds that it's
8 an anti-SLAPP litigation and that this Court could
9 conceivably say, "No, it's not." And -- but I will still
10 not disturb the Commissioner's ruling.

11 MR. CHADWICK: It would also be possible --

12 THE COURT: Conversely, it would be possible, I
13 suppose, that the Commissioner would say you don't lose.
14 You lose. There is no newspaper person's privilege. And
15 then that -- well, that will put me in a different position,
16 I suppose. If you lose over there, I guess my answer here
17 would be, "Take a writ."

18 MR. CHADWICK: Your Honor, I think we'd have a
19 right to appeal. But that's a separate matter.

20 THE COURT: Well, I am not an appellate lawyer. I
21 am just a Superior Court judge.

22 MR. CHADWICK: But Your Honor, as a matter --

23 THE COURT: So don't take my advice on how to
24 proceed before the appellate departments as categorical.

25 MR. CHADWICK: It is a matter of law, though, that
26 we would have to -- we would still be entitled to a hearing,
27 because there'd be no law of the case to prevent us from
28 seeking and obtaining a hearing. What I am saying is --

1 THE COURT: There is no law of the case no matter
2 take I do. There's only law of the case when the Court of
3 Appeal speaks.

4 MR. CHADWICK: Precisely. So we still have to
5 have a hearing on the demurrer and Motion to Strike.

6 THE COURT: So be it. We'll still have a hearing
7 on it. I don't --

8 MR. CHADWICK: Then in what way is judicial
9 economy or the best interests of the parties served by
10 delaying this matter further, following a hearing on a
11 Motion to Compel?

12 THE COURT: That's a rhetorical question. I think
13 that judicial economy is best served by having discovery
14 matters resolved in the manner that this Court has
15 determined that they should be decided.

16 And this is, if you will, a proceeding that is in
17 essence designed to obtain discovery, all right? And that's
18 what I think should happen. So we will give you a date.

19 MS. LAPLANT: Your Honor?

20 THE COURT: When is your hearing date before
21 Commissioner?

22 MS. LAPLANT: I don't have one yet, because it was
23 taken off calendar. So the way I've drafted the proposed
24 order is the demurrer and Motion to Strike can be put back
25 on calendar after the discovery matter is concluded. After
26 the hearing is concluded.

27 MR. CHADWICK: Just as a purely temporal matter,
28 Your Honor, Miss Alexander on whose behalf I am specially

1 appearing is out of the country on business from November
2 19th to November 30th. So I'd like the calendaring the
3 Motion to Compel to accommodate that. And I would like to
4 get a hearing date on the demurrer --

5 THE COURT: I'd be happy to get a hearing date --
6 I can give it to you in January. My assumption is that you
7 will have your Motion To Compel sometime in December. Miss
8 Roque, sometime in January? Mid-January?

9 THE COURT: Pick a date, Counsel. Any day of the
10 week of the month of the 12th or 19th. Whichever you
11 prefer.

12 MR. CHADWICK: I don't have my good glasses on,
13 Your Honor. Excuse me while I walk over here.

14 THE COURT: I was going to suggest you borrow
15 mine, but they are probably not good.

16 MR. CHADWICK: Isn't justice blind, Your Honor?
17 The 12th? Is that available?

18 THE COURT: That's fine. January the 12th. In
19 some courts justice is sneaking a peak underneath the
20 blindfold. She's not blind. Merely blindfolded.

21 MS. LAPLANT: Would you like to change our
22 proposed order?

23 MR. CHADWICK: Can I see the proposed order first?
24 Thank you. We still need to get a date for the --

25 MS. LAPLANT: Yes, we still need --

26 THE COURT: I want to thank you both very much.

27 MR. CHADWICK: Thank you. I guess this doesn't
28 really affect anything. We've got a hearing date. It just

1 says that the other has to be conducted first.

2 THE COURT: And I am sure we'll have a continued
3 dialogue.

4 (Whereupon, the proceedings were adjourned.)

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REPORTER'S CERTIFICATE

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4 I, Joseph Hayden Vickstein, an official reporter
5 of the Superior Court of the State of California, in and for
6 the City and County of San Francisco, do hereby certify:

7 That the foregoing transcript, as reduced to
8 transcript by computer under my direction and control to the
9 best of my ability, is a full, true and correct computer
10 transcription of the shorthand notes taken as such reporter
11 of the proceedings in the above-entitled matter.
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15 Joseph Hayden Vickstein, CSR #4780
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