

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Intentional Misconduct**COURT MINUTES****May 03, 2024**

A-23-879938-C Christopher Davin, Plaintiff(s)
 vs.
 Southern Nevada Association of Pride, Inc,
 Defendant(s)

May 03, 2024**10:30 AM****Minute Order****HEARD BY:** Pieper, Danielle**COURTROOM:** Chambers**COURT CLERK:** Kimberly Gutierrez

JOURNAL ENTRIES

- This matter came before the Court on April 16, 2024, for Defendants Gary Costa and Golden Rainbow of Nevada Inc.'s Special Motion to Dismiss Per Nevada's ANTI-SLAPP Provisions, NRS 41.635, Et. Seq. and Defendants Southern Nevada Association of Pride, Inc. D/B/ A Las Vegas Pride, Holy Order Sin Sity Sisters of Perpetual Indulgence, Inc., and Sean Vangorder's Special Motion to Dismiss Plaintiffs' Slapp Suit Pursuant to NRS 41.660 (Anti-Slapp), and Request for Attorney Fees, Costs, and Damages Pursuant to 41.670. After considering the motions, supporting documents, legal arguments, and relevant case law, the Court hereby issues the following findings: Plaintiffs, Christopher Davin and Trevor Harden, both individuals, and Henderson Equality Center, a Nevada non-profit corporation, filed a defamation lawsuit against the above named Defendants. Plaintiff dismissed an additional six Defendants with another four Defendants set for Plaintiffs' Notice of Intent to Seek Default.

As a preliminary matter, the Court considered the allegations in the complaint, the supporting documentation and evidence provided to the Court thus far. In doing so, the Court finds Defendant Costa made no statement about Plaintiff Henderson Equality Center. Additionally, Plaintiffs never argued Defendant Costa defamed Henderson Equality Center, nor have Plaintiffs provided any evidence to support a defamation claim against Defendant Costa or Defendant Golden Rainbow. The Court finds Plaintiffs have not alleged any actions or claims against Defendant Henderson Equality Center that would justify the instant lawsuit, and accordingly, the Court dismisses Henderson Equality Center pursuant to NRCP 12(b)(5). For that reason, COURT ORDERED, the claims against Mr. Costa and Golden Rainbow brought forth by Henderson Equality Center are DISMISSED.

The Court notes the below analysis applies to Defendants Gary Costa and Golden Rainbow of Nevada, Inc.

The Court first addresses the issue in the ANTI-SLAPP motion. The Court must address whether or not the statements made by Defendant Costa in an email on May 3, 2023, were defamatory. The Court must look at whether Defendant Costa's statements were made in a public forum, were of public interest and were truthful or Defendant Costa's mere opinions.

Moreover, when considering Defendant Costa and Golden Rainbow's Motion, the Court applies the below analysis to the *independent* actions of Mr. Costa and the *independent* actions, if any, of Golden Rainbow. The Court was certainly mindful of the fact Mr. Costa is the executive director of Golden Rainbow of Nevada, Inc., but nonetheless, the Court was careful in its analysis as to each of the Defendant's individual actions.

The Court has considered Defendants' Motion to Dismiss under Nevada's anti-SLAPP statutes, NRS 41.660 et seq., and applies the two-pronged analysis outlined herein.

As to the first prong, the Court must determine whether the statements were of the public interest and whether the statements were truthful or opinion-based. The Court finds that the statements made by Defendant Costa were of public interest. Defendant Costa's statements were disseminated to the LGBTQIA2+ Connect group, a public *coalition* discussing LGBTQ+ community issues. The Court notes the subscriber list, just for Golden Rainbow alone, is comprised of more than two thousand people. The Court finds that this group constitutes a public forum. The Court looks to precedent recently set forth by the Nevada Supreme Court in *Kosor v. Olympia Companies*, regarding the issue of what constitutes a public forum. In making this determination, the Court first analyzed traditional characteristics of public forums, specifically: whether the email server was compatible with expressive activity, and the extent to which the server allowed free interaction between the person posting the message and the constituent commentators. In the instant case, the Court finds the LGBTQIA2+ Connect group is a coalition of local leaders and organizations that meet regularly to discuss pertinent issues within the local LGBTQ+ community. While the Court acknowledges Defendant's position there were only 44 emails on the thread, the Court finds that this figure does not represent the actual reach of the group. Considering the fact LGBTQIA2+ Connect meet regularly, and that the group does not deny anyone's entry to said meetings, the Court finds the email server represents a public forum in which information about the LGBTQ issues and concerns are freely exchanged and disseminated to the broader community. See *Kosor v. Olympia Companies*, 136 Nev. 705, 478 P.3d 390 (2020).

Additionally, the Court finds the arguments set forth in the motion compelling, and therefore, has determined the statements were either truthful or expressions of valid opinion, both of which are protected under the First Amendment. The Court does not find Golden Rainbow acted on behalf of the organization in any private capacity within the Connect group.

The Court notes Defendant Costa's statements were based on his observations and experiences within the LGBTQ+ community. Defendant Costa formed his opinion of Plaintiffs from the years of witnessing Plaintiffs' unethical behavior and from publically available information. The Court notes,

an opinion based on truth is not a basis for a defamation claim, as long as it is based on true and public information, and an evaluative opinion conveys “the publisher's judgment as to the quality of another's behavior and, as such, it is not a statement of fact.” *Lubin v. Kunin*, 117 Nev. 107, 112, 17 P.3d 422, 426 (2001).

Therefore, the Court cannot invalidate Defendant Costa’s opinions, based on his own experiences and experience in the way in which Plaintiffs treats others. Likewise, the Court cannot make the determination that Defendant Costa took these things “personally,” and therefore, crafted a personal vendetta/smear campaign. The Court looks to the speech, and determines whether or not it is defamatory or whether it is protected. The Court finds that the speech in this case is protected speech, as it is directly related to the experiences Defendant Costa endured throughout years of interactions and opinion-forming of Plaintiffs. In a defamation action, “it is not the literal truth of ‘each word or detail used in a statement which determines whether or not it is defamatory; rather, the determinative question is whether the “gist or sting” of the statement is true or false.’” *See Rosen v. Tarkanian*, 135 Nev. 436, 441, 453 P.3d 1220, 1224 (2019) citing *Oracle USA, Inc. v. Rimini St., Inc.*, 6 F. Supp. 3d 1108, 1131 (D. Nev. 2014). Thus, for Plaintiffs to ask the Court to infer any underlying personal dispute as underlying motivation for its decision, is a complete abuse of this Court’s discretion when deciding such matters. The Court emphasizes that the precedent in Nevada is clear: statements of opinion are protected speech under the First Amendment of the United States Constitution and are not actionable at law. *See Nevada Ind. Broadcasting*, 99 Nev. at 410, 664 P.2d at 341–42.

When determining whether or not each one of Defendants’ statements constitute fact or opinion, the Court again looks to Nevada precedent. That is, “whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact.” *Id.* at 410, 664 P.2d at 342. Because “there is no such thing as a false idea,” *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002) (internal quotation marks omitted), statements of opinion are statements made without knowledge of their falsehood under Nevada's anti-SLAPP statutes. *Abrams v. Sanson*, 136 Nev. 83, 89, 458 P.3d 1062, 1068 (2020).

The Court reviewed every statement made by Defendant Costa regarding the security threats and pattern of bullying, and the Court finds evidence supported each of these statements and/or these statements were based on Defendant Costa’s valid opinion. As explained in his supplemental declaration and further expanded upon at oral argument, Defendant Costa witnessed bad actors inside and outside the LGBTQ+ community for four decades, and based on his own experience, he knows what constitutes bullying and harassing behavior. Moreover, the Court finds there was no compelling evidence presented by Plaintiffs to rebut the fact that, at the very least, Defendant Costa made these statements without knowledge of their falsehood.

As such, the Court finds Defendant Costa and Golden Rainbow have both satisfied their burden under the first prong in the ANTI-SLAPP analysis.

As to the second prong, the probability Plaintiffs will prevail on their claim, the Court notes Plaintiffs,

as public figures, must prove by clear and convincing evidence that the statements were made with actual malice. *Wynn v. Associated Press*, 140 Nev. Adv. Op. 6, 542 P.3d 751, 756 (2024) citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 719, 57 P.3d 82, 90 (2002). The Court finds Plaintiffs have failed to meet this burden and have not provided sufficient evidence to substantiate these claims. A public figure plaintiff can prevail on an anti-SLAPP special motion to dismiss by putting forth only minimal evidence of actual malice. The statutes' mechanism for providing an early and expeditious resolution of meritless claims would be rendered ineffectual. *Id.*

For the reasons set forth above, the Court finds Defendant Costa's statements in his May 3, 2023, email are not defamatory, and thus, are protected under Nevada's anti-SLAPP statutes. Accordingly, the Court finds that both Defendants Costa and Golden Rainbow met their burden under the first prong of the anti-SLAPP analysis showing that his statements were an issue of public interest, made in a public forum, and were true or based on his valid opinion. Additionally, Plaintiffs failed to provide any evidence of their probability of prevailing on their claims. Thus, Plaintiffs failed to satisfy their burden under the second prong. As such, Defendants Gary Costa and Golden Rainbow of Nevada, Inc.'s Special Motion to Dismiss Per Nevada's ANTI-SLAPP Provisions, NRS 41.635, ET. Seq is hereby GRANTED. The Court will require additional briefing as to attorney fees and costs. Next, the Court looks to the Motion to Dismiss filed by Defendants Southern Nevada Association of Pride (Las Vegas Pride), Brady McGill, and Sean Vangorder. The Court notes Holy Order Sin Sity Sisters of Perpetual Indulgence, Inc., and Las Vegas TransPride claims were dismissed without prejudice in Plaintiffs' December 19, 2023 filing.

The Court finds Plaintiffs' Complaint against the aforementioned Defendants included allegations of defamation, false light, tortious interference, civil conspiracy, and other various claims, all of which Plaintiffs contended arose from a Press Release issued by Defendant Las Vegas Pride. Defendants have moved to dismiss the complaint under Nevada's anti-SLAPP laws, arguing that their statements were made in good faith, in furtherance of the right to free speech on matters of public concern. Here, the Court looks at Nevada's anti-SLAPP statutes codified as NRS 41.660 et seq. These statutes provide a mechanism for the expedited dismissal of lawsuits that target the exercise of constitutionally protected rights, such as the right to free speech. Pursuant to NRS 41.660(3)(a), a defendant may file a special motion to dismiss if they can demonstrate, by a preponderance of the evidence, that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern.

As a preliminary matter, the Court is careful to note the Press Release by Las Vegas Pride addresses Plaintiffs distinctly as individuals. As to the harassment of community members and former board members, only Plaintiff Davin was addressed. Plaintiff Harder was mentioned twice in the Press Release. Once in the vote of "no" confidence from the Las Vegas Pride's Board of Directors minutes and the other time in the section which sought additional comments from the Las Vegas Pride's constituents on experiences with Plaintiff. The Press Release was published by Las Vegas Pride and not any other named Defendants. Moreover, at no time is Plaintiff Henderson Equity Center named nor mentioned.

Again, the Court must conduct the two-prong analysis under Nevada's Anti-SLAPP laws to determine if dismissal is appropriate.

As to the first prong, the Court considers whether or not Defendants have met their burden of demonstrating the good faith communication on matters of public concern. Here, the Defendants asserted their statements in the Press Release were made in good faith and in furtherance of the right to free speech on matters of public concern, particularly regarding the LGBTQ+ community in Las Vegas. The Court finds Defendants' arguments are supported by a preponderance of evidence, showing that the communication was made in good faith. In making this determination, the Court looks to the precedent set forth in *Rosen v. Tarkanian*, where the Nevada Supreme Court held that the determination of whether a communication is made in good faith and in furtherance of the right to free speech depends on whether the "gist or sting" of the statement is true or false. Furthermore, NRS 41.637 requires that the communication be "truthful or is made without knowledge of its falsehood." *Rosen v. Tarkanian*, 135 Nev. 436, 453 P.3d 1220 (2019). The Court finds Defendants provided declarations and exhibits to support their assertion that the Press Release addressed issues of public concern and was made in good faith. The Court emphasizes it is not just the declarations attesting to the truthfulness of the statements made in the Press Release, but the actions and interactions of the Las Vegas Pride constituents. Defendants showed through supporting documentation, including emails and social media posts how Plaintiffs were perceived in the LGBTQ+ community. The Court finds Defendants' actions were in direct response to a genuine concern for the LGBTQ+ community in Las Vegas.

Illustrative of Plaintiff Davin's behavior was the email sent to Defendant Brady on April 8, 2023. Plaintiff Davin not only asked Las Vegas Pride Magazine to remove page 47, but also told Defendant Brady there was a trademark infringement in page 47. Plaintiff Davin then goes a step further and demands page 47 be removed or legal action will be taken. Plaintiff Davin then goes another step and tells Defendant Brady he has already successfully sued for this type of trademark infringement and that he has the money to protect [his] Trademark.

Thereafter, Plaintiffs took issue with the Las Vegas Pride Facebook page. It is uncontested Facebook took action against Las Vegas Pride by deactivating their account and removing posts and photos which promoted community events. The Court does not speculate whether or not the trademark infringement actions by Facebook were legal. Rather, the Court focuses its analysis on whether Las Vegas Pride's actions were reasonable in their concern for their organization; and whether their organization were at risk of additional harm and loss. Thus, the Court finds Las Vegas Pride acted as a reasonable organization would. Las Vegas Pride has represented to Plaintiffs prior to this lawsuit, and now to this Court, their belief their organization was at risk of unlawful interference. While the Court recognized Plaintiffs' argument that they believe they had a legal basis in confronting Defendants, the Court finds Las Vegas Pride has provided substantial evidence to support how Plaintiffs' actions made the risks to Defendants all the more tangible. The Court finds that Plaintiffs' challenges were made material when Defendants' accounts were compromised. Moreover, Defendants' accounts were compromised both internally, with regard to their organization's servers;

and externally – with regard to their Facebook account, both of which directly affected their constituents. In other words, the Court finds that Defendants had reason to believe their organization were at the mercy of Plaintiffs’ actions, and that Defendants acted in a reasonable manner when attempting to rectify any damage done to their organization and the constituents they represent.

The Court next moves on to Plaintiff Davin’s access to sensitive information and data from Las Vegas Pride, which he used without permission to benefit his organization. Defendants again have provided the Court with striking evidence in support of this issue. The Court notes that the communications regarding prohibited access to sensitive information was prior to the Board of Director’s meeting on August 11, 2021. In the August 11, 2021 vote, the Board voted unanimously to remove Plaintiff Davin from his position on the Board due to his violation of Las Vegas Pride’s Bylaws Section 7.1 and Bylaws Section 7.2. See “*Minutes of the Las Vegas PRIDE Board – Closed Session.*” August 11, 2021. The Court notes Defendant Harder also resigned from his position on the Board on August 11, 2021.

Thus, the Court finds Defendants have provided substantial evidence to support their concerns regarding Plaintiffs’ activities. This is evidenced by the numerous members within the LGBTQ community who reported incidents with Plaintiffs. The Court finds these constituents reported, based on their own experiences, what they opined to be bullying, threats, and/or unethical business activities by Plaintiffs.

The Court finds the Press Release was made in a public forum. The Court looks to precedent recently set forth by the Nevada Supreme Court in *Kosor v. Olympia Companies*, regarding the issue of what constitutes a public forum. In making this determination, the Court first analyzed traditional characteristics of public forums, specifically: whether the site was compatible with expressive activity, and the extent to which the site allowed free interaction between the poster and constituent commentators. In the instant case, the Court finds that the Press Release undoubtedly allowed for this interaction as the Press Release, on its face, was indicative of its aim to promote and protect the LGBTQ community. See *Kosor v. Olympia Companies*, 136 Nev. 705, 478 P.3d 390 (2020). An excerpt from the Press Release reads as follows:

For 40 years, Las Vegas PRIDE has fostered strong working relationships with local and national community-serving organizations. Las Vegas PRIDE takes direct threats to our Board Members and attacks on our organization by Mr. Davin and Mr. Harder seriously. Bullying actions of these individuals will not be tolerated, and we encourage the community and our allies to assess their relationships and partnerships through the lens of integrity and professionalism. These are the criteria by which our current and future partnerships will be evaluated. We encourage our community to adopt a zero-tolerance for bullying and violence, no matter the source. Las Vegas PRIDE exists to uplift our community and celebrate our achievements. This Board feels strongly that we must offer our help, love, and support to others who work within the organization(s) represented by both Mr. Davin and Mr. Harder. While we have no direct knowledge

or contact with others within these organization(s), Las Vegas PRIDE maintains an open line for communication and resolution for others who wish to discuss this topic.

Here, the Court, following *Olympia*, was careful to tailor the scope of the public forum in question narrowly. The Court used the same traditional public forum principles, and finds that the website of the Press Release, as well as its respective social media accounts were an interactive space recognized by law as a public forum. The Court makes this finding considering the website itself included an invitation to discuss, included a contact to a Las Vegas Pride representative's email address, and provided direct links for an individual to share the content. This supported the conclusion that the post at issue created a forum for citizen involvement by automatically allowing one to add one's own insight and directly interact with others. The Court finds the social media websites allowed interactive commentary and engagement. See *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 302 F. Supp. 3d 541, 574 (S.D.N.Y. 2018). See also *City of Madison Joint Sch. Dist. No. 8 v. Wis. Emp't Relations Comm'n*, 429 U.S. 167, 175, 97 S.Ct. 421, 50 L.Ed.2d 376 (1976); See also *Page v. Lexington Cty. Sch. Dist. One*, 531 F.3d 275, 284-85 (4th Cir. 2008).

Accordingly, the Court finds Defendants have met the first prong. Thus, the burden shifts to Plaintiffs to demonstrate, with prima facie evidence, a probability of prevailing on the claim. As to the second prong, the Court finds Plaintiffs have failed to provide sufficient evidence to meet this burden. The Court finds the allegations in the Complaint are largely unsupported and rely on speculation, rather than concrete evidence. Furthermore, and perhaps most significant to the Court's ruling, is the fact Plaintiffs have not demonstrated that the statements in the Press Release were false or made with knowledge of their falsehood.

Based on the foregoing analysis, the Court finds Defendants have met their burden under Nevada's Anti-SLAPP statutes by showing by a preponderance of the evidence that the communications at issue were made in good faith and in furtherance of the right to free speech on matters of public concern. In contrast, Plaintiffs have failed to demonstrate a probability of prevailing on their claims. As such, Defendants Southern Nevada Association of Pride, Inc. D/B/A Las Vegas Pride, Holy Order Sin City Sisters of Perpetual Indulgence, Inc., and Sean Vangorder's Special Motion to Dismiss Plaintiffs' Slapp Suit Pursuant to NRS 41.660 (Anti-Slapp) and Request for Attorney Fees is hereby GRANTED. The Court will require additionally briefing as to attorney fees and costs. Defendants to prepare the Order consistent with the Court's ruling, provide to the other parties for review, and submit the same to the Court. Defendants shall submit this order to dc7inbox@clarkcountycourts.us within 14 days pursuant to EDCR 7.21. Additionally, the Court shall set a Status Check: Order Submitted on the Court's Chambers Calendar for May 24, 2024.

Finally, the Court notes for the record that Defendants Nicole Williams and Anthony Cortez have not appeared in this case thus far.

05/24/2024 (CHAMBERS) STATUS CHECK: SUBMITTED ORDER

CLERK'S NOTE: A copy of this Minute Order was electronically served by Courtroom Clerk, Kimberly Gutierrez, to all registered parties for Odyssey File & Serve. /kg (05/03/2024)