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Better Business Bureau of Metro Atlanta Wins Dismissal of Libel Suit Under Georgia's New(ish) Anti-SLAPP Law

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A Fulton County, Georgia, court has dismissed a defamation case against the Better Business Bureau of Metropolitan Atlanta pursuant to Georgia's Anti-SLAPP statute, O.C.G.A. § 9-11-11.1, amended in 2016 to track California's anti-SLAPP law. National Medical Administrators, Inc. v. Better Business Bureau of Metropolitan Atlanta, Inc., 2021 Ga. Super LEXIS 2 (March 29, 2021).

Background

In 2016, at the urging of Georgia's burgeoning entertainment industry, Georgia substantially revised its anti-SLAPP statute. Instead of applying only to statements made in connection with official proceedings, it now tracks California's broad anti-SLAPP statute, California Code of Civil Procedure § 425.16, and applies to any claim "arising from any act" that "could reasonably be construed as" being "in furtherance of" the right to free speech "in connection with an issue of public interest or concern." O.C.G.A. § 9-11-11.1(b). Assuming that this threshold is met – that is, that the claim involves speech on a matter of public concern – then the claim must be dismissed unless the plaintiff can establish at the outset "that there is a probability that [it] will prevail on the claim."

Like in California, a winning defendant on an anti-SLAPP motion is entitled to recover attorneys' fees. In the nearly five years since the revision was enacted, Georgia courts have addressed the anti-SLAPP statute only a handful of times.

Against this backdrop, National Medical Administrators, Inc. ("NMA"), a medical debt-collection agency, filed defamation claims against the Better Business Bureau of Metropolitan Atlanta ("BBB-MA"). First, NMA alleged that BBB-MA wrongfully stated on its website that NMA was "also known as" TRS, one of its clients which sells "nutritional supplements," such as the "male enhancement" product "Raging Lion." Second, NMA alleged that the statement on its profile on the BBB website that there were a "pattern of complaints" against it was false. According to NMA, the "complaints" were really about TRS, not about NMA.

Anti-SLAPP Motion

BBB-MA brought an anti-SLAPP motion on both claims. It explained – through an affidavit and documents – that *it* did not publish that NMA was "also known as" TRS; rather, that notation was added to the general BBB website (not to a BBB-MA page specifically) by a different, and independent, BBB affiliate. It also asserted that the "pattern of complaints" language was substantially true; consumers *had* submitted multiple complaints to NMA's profile page.

In opposition, NMA argued that BBB-MA did not meet the threshold requirement for invoking the anti-SLAPP statute (that the statements at issue were made in connection with an issue of public interest or concern) because the challenged statements were about an "individual company" and its "affiliation with a separate, independent entity." It then argued that, in any event, it was likely to succeed on the merits. In NMA's view, the anti-SLAPP statute did not apply as long as NMA presented *any* evidence to support its claims, however minimal. Here, it

asserted, the fact that the "AKA" notation could be seen from a page hosted by BBB-MA was sufficient evidence of publication. As for "pattern of complaints," it asserted that NMA's CEO's affidavit that the complaints were really about TRS was sufficient evidence of falsity. It also asserted that the number of complaints submitted should not be considered a "pattern" as a matter of law.

The court rejected these arguments and granted the anti-SLAPP motion in full. It held that defendant made the "'threshold showing' that the challenged speech arises 'in connection with an issue of public interest or concern' because the speech concerns consumer affairs." As for the appropriate standard to apply on the question of "probability of success," the court held that, to defeat an anti-SLAPP motion, the plaintiff must show that its claim is "substantiated" and supported by "competent and admissible evidence." Put differently, the court wrote, citing California case law, "the plaintiff's burden at this step is akin to the standard on review of a motion for summary judgment, nonsuit, or directed verdict." It explained that the anti-SLAPP statute was "meant to be a significant tool to root out non-meritorious cases aimed at speech at the outset" and "not simply another version of an ordinary motion to dismiss."

Applying this standard, the court held that plaintiff had not substantiated its claim that BBB-MA "published" the AKA notation in light of the "significant evidence presented by BBB-MA that it was not the publisher." It likewise had not substantiated the claim that the "pattern of complaints" language was materially false, given that in the preceding year (as shown by BBB-MA), complaints submitted against the company had increased by 900%. "Under any reasonable definition, and as a matter of law, this constitutes a "pattern" of complaints."

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Alia Smith and Sarah Reise of Ballard Spahr LLP represented the Better Business Bureau of Metropolitan Atlanta. National Medical Administrators was represented by David A. Kleber of the Bedard Law Group.