
IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

KELY JOHANA SUAREZ MOYA and LUZ
MIRIAM MOYA SOLANO,

Plaintiffs,

v.

TIMOTHY BALLARD, et al.,

Defendants.

MEMORANDUM DECISION AND ORDER

Case No. 240901556

Honorable Robert Faust

BACKGROUND

These matters came before the Court on July 9, 2024 for a hearing on the following: Defendants Angel Studios, Inc., Sound of Freedom Movie LLC, Rod Barr, and Alejandro Monteverde's (collectively "SOF Defendants"), Amended Special Motion to Dismiss the First Amended Complaint Under Utah's Uniform Public Expression Protection Act Code §78B-25-101, *et seq.*; Timothy Ballard's Motion for Expedited Relief to Dismiss the First Amended Complaint Under Utah's Uniform Public Expression Protection Act ("UPEPA") Code §78B-25-101, *et seq.*; and Katherine Ballard's Special Motion for Expedited Relief to Dismiss the First Amended Complaint Under Utah's Uniform Public Expression Protection Act ("UPEPA") Code §78B-25-101, *et seq.*

Following argument, the matters were taken under advisement.

SOF DEFENDANTS' MOTION

Argument

In support of the Motion, SOF Defendants argue *The Sound of Freedom* film (the "Film") is a docudrama based on true life events of Tim Ballard, a former U.S. Homeland Security

officer who had worked undercover internationally to catch child sex traffickers. The main character in the Film is named after Ballard, but a disclaimer in the Film makes clear that incidents and characterizations were changed or created for the sake of drama.

One of the characters in the Film is a former beauty queen named Katy Giselle, who is arrested at an island party in Colombia at which several children are rescued through Ballard's undercover anti-trafficking work. Plaintiff Kely Suarez Moya ("Kely") claims this character is a literal and defamatory portrayal of her because she was arrested at an island raid in Columbia. However, according to the SOF Defendants, the Film is not a documentary, and any reasonable viewer would understand that it contains fictionalized characters and events. Also, even if the Giselle character was supposed to be a factual depiction of Kely, the depiction of the character's participation in child trafficking and her related arrest is substantially true if applied to Kely.

As a limited purpose public figure, Kely must prove by clear and convincing evidence that the SOF Defendants acted with actual malice, meaning with knowledge or reckless disregard that viewers would interpret the Giselle character as making defamatory statements of fact about Kely. It is SOF Defendants' position Kely cannot make this showing. Finally, argue the SOF defendants, Plaintiffs' other claims are rooted in the same defamation allegations and fail for the same reasons.

In opposition to the Motion, Plaintiff Kely Suarez ("Plaintiff" or "Kely") argues on October 11, 2014, on an island outside of Cartagena, Colombia. Defendants Timothy Ballard ("Ballard"), Operation Underground Railroad ("OUR") and Matthew Osborne ("Osborne") carried out a staged child sex-trafficking raid, which became a founding myth for Ballard and OUR. The "pedophile johns" were fake. The children had never actually been trafficked. And the supposed traffickers, like Kely, were not traffickers at all; they had been entrapped by Ballard and were pawns in his plan to elevate himself and his newly-founded non-profit, OUR.

According to Kely, the fake raid and the events surrounding it, were documented by a professional film crew, and with the footage, Ballard made a television series called *The Abolitionist*, and then a movie of the same name. Ballard subsequently produced the movie that became *Sound of Freedom*.

It is Kely's position that in producing and distributing the Film, the SOF Defendants ignored multiple red flags, including express warnings about Ballard and the veracity of his story. With reckless disregard for the truth, Keli contends the SOF Defendants promoted, marketed, and distributed the Film around the world and in doing so, represented as fact that the character "Katy Giselle" was a representation of Kely and that Kely trafficked children for sex. According to Kely, nothing could be further from the truth. Plaintiffs contend they filed this suit to clear their names and hold the Defendants to account for their reckless and defamatory lies.

Ruling

§ 78B-25-107. Dismissal of cause of action in whole or part provides:

(1) In ruling on a motion under Section 78B-25-103, the court shall dismiss with prejudice a cause of action, or part of a cause of action, if:

(a) the moving party establishes under Subsection 78B-25-102(2) that

this chapter applies;

(b) the responding party fails to establish under Subsection 78B-25-102(3) that this chapter does not apply; and

(c) either:

(i) the responding party fails to establish a prima facie case as to each essential element of the cause of action; or

(ii) the moving party establishes that:

(A) the responding party failed to state a cause of action upon which relief can be granted; or

(B) there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the cause of action or part of the cause of action.

(2) A voluntary dismissal without prejudice of a responding party's cause of action, or part of a cause of action, that is the subject of a motion under Section 78B-25-103 does not affect a moving party's right to obtain a ruling on the motion and seek costs, attorney fees, and expenses under Section 78B-25-110.

(3) A voluntary dismissal with prejudice of a responding party's cause of action, or part of a cause of action, that is the subject of a motion under Section 78B-25-103 establishes for the purpose of Section 78B-25-110 that the moving party prevailed on the motion.

Utah Code Ann. § 78B-25-107 (West).

After reviewing the record in this matter and considering such as appropriate, the Court is persuaded the SOF Defendants have satisfied their burden of demonstrating that the challenged causes of action fall within a protected area of speech or conduct within the UPEPA. This said, however, after considering the memoranda, arguments of counsel and appropriate evidence, the Court further finds that the causes of action nonetheless state viable claims for relief which raise genuine issues of material fact, thus precluding a ruling as a matter of law.

Indeed, the SOF Defendants were warned multiple times regarding Tim Ballard, OUR, and *Sound of Freedom*. They participated in meetings where the criminal investigations against Ballard and OUR were discussed. They specifically hired a PR manager as a result of what had come out about Ballard and OUR. Jeff Harmon, the owner of Angel Studios, represented that “dozens of people” had expressed concerns about Ballard and *Sound of Freedom*. Jeff Harmon also represented that the SOF Defendants had done a “very very deep” dive into the allegations against Ballard and OUR.

Additionally, in promoting the Film, Defendant Angel Studios claimed as fact that the character “Giselle” was “inspired by Kelly (sic) Johana Suarez, a former beauty pageant queen

and model known as ‘Miss Cartagena,’ and that she “exploited her reputation in a poverty-stricken neighborhood to recruit children for sex trafficking, betraying their trust by selling them into the trade.

Based upon the forgoing, and when considered as appropriate on a special motion to dismiss under the Act, the Court finds the causes of action state a prima facie case as to each essential element and further that the statements of the SOF Defendants were made with knowledge that such was false or with reckless disregard of whether it was false or not. Accordingly, Defendants Angel Studios, Inc., Sound of Freedom Movie LLC, Rod Barr, and Alejandro Monteverde’s Amended Special Motion to Dismiss the First Amended Complaint Under Utah’s Uniform Public Expression Protection Act Code §78B-25-101, *et seq.*, is respectfully, DENIED.

TIMOTHY BALLARD’S MOTION

Argument

In support of the motion Timothy Ballard (“Tim”) argues the determination of the Ballards’ UPEPA Motions are based solely on the Plaintiffs’ (Kely Johana Suarez Moya (“Kely”) and Luz Miriam Kely Solano (“Luz”)) (collectively “Plaintiffs”) operative Complaint and the only allegations of defamation therein against Tim cannot survive the UPEPA motion. Specifically, Tim argues Plaintiffs’ attempt to survive the motion by arguing without citing to any allegation in the FAC, that their “claims are based on the numerous false and defamatory statements made by the Ballards and others in marketing and promoting *Sound of Freedom* [“SOF”].” Opp. [DKT 153], p. 2. Tim contends there are no such statements alleged against either of the Ballards anywhere in the 72-page FAC, and to the extent any such statements are attributed to “others,” that cannot form the basis of a claim against the Ballards.

As to the new “Clips” which are offered in opposition to each of the Ballards’ motions, Tim asserts such are irrelevant and admissible and even if considered, they are insufficient in that: (1) they have nothing to do with any allegations in the FAC directed against either of the Ballards; (2) there is nothing indicating when the statements in the Clips were allegedly published; and (3) the Clips are wholly unauthenticated.

Finally, Tim argues Plaintiffs offer no opposition to the Ballards’ arguments that each of their non-defamation claims equally fail.

Plaintiffs oppose the motion arguing the claims are not based on trial testimony or other protected statements and were provided as context and to show malice. Rather, assert Plaintiffs, their claims are based on the numerous false and defamatory statements made by the Ballards and others in marketing and promoting *Sound of Freedom*.

In support of their position Plaintiffs provided the Court with several video clips of Tim and others, which Plaintiffs contend demonstrate these individuals falsely promoting *Sound of Freedom* and disparaging Kely. The video clips include the following:

1. CLIP 4 – Kely Suarez is a famous person. Kely Suarez was Ms. Cartagena. Kely Suarez had a modeling school. Kely Suarez was recruiting children. Kely Suarez won Ms. Cartagena by saying she

wanted to help those children.

2. CLIP 5 – Kely Suarez is in prison. She has been sentenced to 20 years or more.

3. CLIP 6 – All of the children are real. All the pedophiles and traffickers are real in *Sound of Freedom*.

4. CLIP 11 – The movie *Sound of Freedom* is a true story with Ms. Cartagena, Kely Suarez. Kely Suarez was famous in the community and had a modeling school. Kely Suarez was giving scholarships to entice them into becoming famous. Kely Suarez used drugs and pornography to convince these kids to have sex with Americans because that is what famous people do.

Plaintiffs have also presented to the Court the Ballards' joint statement, affirming the truthfulness of *Sound of Freedom*.

Ruling

78B-25-106 Proof provides:

In ruling on a motion under Section 78B-25-103, the court shall consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment under Utah Rules of Civil Procedure, Rule 56.

After reviewing the record and considering such as appropriate, the Court is persuaded Tim has satisfied the burden of demonstrating that the challenged causes of action fall within a protected area of speech or conduct within the UPEPA. This said, however, after considering the memoranda, arguments of counsel and appropriate evidence, the Court further concludes that the causes of action nonetheless state viable claims for relief which raise genuine issues of material fact, thus precluding a ruling as a matter of law.

Indeed, the Court finds the causes of action state a prima facie case as to each essential element and further that the statements of Tim were made with knowledge that such was false or with reckless disregard of whether it was false or not. Specifically, Tim was integral to Colombia raid and was aware of the veracity of the numerous statements made.

Based upon the forgoing, Timothy Ballard's Motion for Expedited Relief to Dismiss the First Amended Complaint Under Utah's Uniform Public Expression Protection Act ("UPEPA") Code §78B-25-101, *et seq.* is, respectfully, DENIED.

KATHERINE BALLARD'S MOTION

Argument

With this motion, Katherine Ballard ("Katherine") argues there is only one act in the complaint attributed to her, the Spear Fund Joint Statement, and such is the kind of commentary that the UPEPA is meant to protect, and no exception to the UPEPA applies.

Plaintiffs in opposition that while Katherine may have been justified in believing her husband in the first instance, by the time her statements were made, she “had obvious reason to doubt.” and thus should be held liable.

Ruling

After reviewing the record and considering such as appropriate, the Court is persuaded Katherine has satisfied the burden of demonstrating that the challenged causes of action fall within a protected area of speech or conduct within the UPEPA and further that Plaintiffs have failed to state a prima facie case as to each essential element against Katherine. Indeed, Plaintiffs fail to provide any evidence that the Spear Fund Joint Statement attributed to Katherine to support their claims was made by her with knowledge that such was false or with reckless disregard of whether it was false or not.

Based upon the forgoing, Katherine Ballard’s Motion for Expedited Relief to Dismiss the First Amended Complaint Under Utah’s Uniform Public Expression Protection Act (“UPEPA”) Code §78B-25-101, *et seq.* is GRANTED. Pursuant to Utah Code Ann. § 78B-25-110, and because Katherine has demonstrated that UPEPA applies and that Plaintiffs’ claims should be dismissed, she is awarded her attorneys’ fees and expenses. Counsel is asked to submit the appropriate affidavit for the Court’s consideration.

ORDER

This Memorandum Decision and Order constitutes the Order regarding the matters addressed herein. No further order is required.

DATED this 15th day of July 2024.

BY THE COURT

A circular blue ink seal for the Third District Court, Salt Lake City, Utah. The seal features a central emblem with a mountain and a sun. Overlaid on the seal is a handwritten signature in blue ink that reads "Robert Faust".

Robert Faust,
District Court Judge