SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE

MINUTE ORDER

DATE: 10/11/2022 TIME: 01:30:00 PM DEPT: 53

JUDICIAL OFFICER PRESIDING: Richard K. Sueyoshi
CLERK: J. Servantez
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT: J. Frenger, S. Khorn

CASE NO: **34-2018-00236829-CU-PO-GDS** CASE INIT.DATE: 07/13/2018
CASE TITLE: **Acres vs. Marston**
CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Motion to Strike (SLAPP) - Civil Law and Motion - MSA/MSJ/SLAPP

APPEARANCES

Nature of Proceeding: Motion to Strike (SLAPP)

TENTATIVE RULING

Defendants Arla Ramsey's ("Ramsey") and Thomas Frank's ("Frank") (collectively "Defendants") special motion to strike Plaintiff James Acres' ("Plaintiff") complaint is granted.

This matter returns to this Court after the Third District Court of Appeal reversed the Court's February 11, 2019 ruling granting Defendants' motion to quash on the basis that Plaintiff's claims against them were barred by tribal sovereign immunity. (*Acres v. Marston* (2021) 72 Cal.App.5th 417.) Defendants also had a pending anti-SLAPP motion which the Court declined to reach because the Court found it was moot as a result of its ruling on the motion to quash.

Plaintiff's complaint arises from a previous action in the Tribal Court (the "Tribal Action") of the Blue Lake Rancheria ("Blue Lake"). The Tribal Action was filed by the Blue Lake Casino & Hotel ("BLCH") (a tribally owned entity of Blue Lake Rancheria, a federally recognized Indian tribe) against Acres Bonusing, Inc. ("ABI"), and Plaintiff. The Tribal Court action arose from a contract between BLCH and ABI related to ABI's development, service and maintenance of online gambling software. BLCH was represented by Defendant Boutin Jones, Inc. in the Tribal Court action. Defendant Lester Marston ("Judge Marston") served as the Chief Judge of Blue Lake Tribal Court and presided over the Tribal Court action until recusing himself in December 2016. Plaintiff alleged that Marston was providing legal services to BLCH at the same time that he was presiding over the Tribal Court action and failed to disclose the conflicts. Justice James Lambden was then selected to preside over the Tribal Court action. Ramsey approved Janssen Malloy substituting as counsel of record in place of Boutin Jones, Inc. ("Boutin Jones") in February 2017. After various proceedings, Justice Lambden entered a judgment of dismissal of the Tribal Court action in August 2017 pursuant to a stipulation.

In the complaint, Plaintiff asserted various causes of action against numerous Defendants. With respect to Defendants, Plaintiff alleges the first cause of action for "Wrongful Use of Civil Proceedings" (Malicious Prosecution) in connection with conduct in the Tribal Action, the fifth cause of action for aiding and abetting Judge Marston's breach of fiduciary duty, and the seventh cause of action for aiding and

abetting Judge Marston's constructive fraud. Plaintiff alleges Defendants were instrumental in causing Blue Lake to name Plaintiff as a defendant in the Tribal Action without a reasonable belief for doing so, created Judge Marston's conflict of interest by hiring him for work outside of the Tribal Action as a bribe to obtain a favorable outcome, (See, e.g., Complaint, ¶¶ 12-13, 34, 36, 66, 79, 81, 96, 109, 121, 135, 171-174, and 188-190.) Plaintiff's allegations and arguments are based on Defendants' participation in the Tribal Action, including failing to disclose Judge Marston's conflict of interest, and hiring Judge Marston outside of the Tribal Action, including as an attorney for unrelated litigation.

Defendants move to strike Plaintiff's causes of action for Wrongful Use of Civil Proceedings, Aiding and Abetting Wrongful Use of Civil Proceedings, Conspiracy to Commit Malicious Prosecution, Aiding and Abetting Breach of Fiduciary Duty, and Aiding and Abetting Constructive Fraud on the basis that they arise from protected activity under CCP § 425.16 and that Plaintiff cannot establish a probability of prevailing because all of the claims are barred by absolute prosecutorial immunity.

Plaintiff first argues the pending motion is untimely. On September 16, 2022, the Court recently found renewed motions to strike brought by other defendants in this action were proper and timely. (ROA 287, 290.) Plaintiff argues the instant opposition contains new arguments and citations to legal authority that were not presented in opposition to the recent motions and that the new authority and arguments compel a different result on this motion.

Relying on *White v. Lieberman* (2002) 103 Cal.App.4th 210 ("*White*"), Plaintiff argues Moving Defendants waived any right to renew this motion because they failed to appeal the prior ruling by Judge Brown finding the prior motion was moot. In *White*, *supra*, 103 Cal.App.4th at 220, the court found the refusal to consider a special motion to strike on grounds it is moot is the equivalent of an appealable order denying the motion. The court further found that it is error to find an anti-SLAPP motion is moot based on the sustaining of a demurrer because the moving party would be entitled to attorney's fees if the anti-SLAPP motion were granted. However, unlike the demurrer in *White*, the motion to quash or dismiss in this action was reversed. It does not follow from *White* that the failure to appeal an anti-SLAPP motion that was found to be moot prevents a party from bringing a further motion if the order that purportedly rendered the motion moot is reversed on appeal.

Additionally, "[a] party who originally made an application for an order which was refused in whole or party, . . ., may make a subsequent application for the same order upon new or different facts, circumstances, or law, in which case it shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown." (Code Civ. Proc. § 1008(b).) Here, Moving Defendants submit an affidavit averring the Honorable David Brown previously denied a prior anti-SLAPP motion on February 5, 2019 on grounds the motion was moot due to an order granting a motion to quash and dismiss. (Jones Decl., ¶ 6.) Moving Defendants further declare the order purportedly mooting the prior anti-SLAPP motion was reversed on appeal. (*Ibid*.) Thus, this Court also finds the reversal of the prior order creates new facts, circumstances, or law and that Moving Defendant may therefore properly bring a second application.

The Court also rejects Plaintiff's argument that the Court should not hear the instant motion because it can no longer serve to dismiss this lawsuit at the earliest stages of the case. Plaintiff fail to cite any authority for the proposition that a case on remand has obviously progressed past the earliest stage of the case. Despite the appeal and remand, this action remains in the pleading stage. Moving Defendants timely filed the first anti-SLAPP motion which the Court ruled was mooted by the fact that their motion to quash was granted. The motion was renewed shortly after this case was returned to the Court after the Third District Court issued its remittitur. The Court retains discretion to entertain an anti-SLAPP motion that was filed after the 60-day time limit and finds such discretion is properly exercised here. (CCP § 425.16(f).)

The Court's review of an anti-SLAPP motion involves a two-prong process. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) First, Defendants must establish that the challenged causes of action arose from "an act...in furtherance of [their] right of petition or free speech." (CCP § 425.16(b)(1).) If Defendants meet that burden, then the second prong requires Plaintiff to establish "that there is a probability that [Plaintiff] will prevail on the claim." (*Id*.) Only a cause of action that satisfies both prongs of the anti-SLAPP statute -- i.e., that arises from protected speech and lacks even minimal merit is a SLAPP, subject to being stricken under the statute. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 819-820; citations omitted.) Thus, initially, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. (*Plumley v. Mockett* (2008) 164 Cal.App.4th 1031, 1046.) "A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (e)." (*Braun v. Chronicle Publishing Co*. (1997) 52 Cal. App.4th 1036, 1043.)

First Prong-Arising From Protected Speech

In determining whether Defendants met their burden, the Court considers not only the pleadings, but also the "supporting and opposing affidavits stating the facts which the liability or defense is based." (CCP § 425.16(b)(2).) 'In deciding whether the 'arising from' requirement is met, a court considers the 'pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79.) As noted by relevant authority, it is crucial to look past the allegations in the complaint and to consider affidavits in order to obtain the complete picture of the plaintiff's claims. (*Jespersen v. Zubiate-Beauchamp* (2003) 114 Cal.App.4th 624, 630.)

"A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (e)." (*Braun v. Chronicle Publishing Co*. (1997) 52 Cal. App.4th 1036, 1043.) Subdivision (e) provides: "As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest."

As to the first cause of action for Wrongful Use of Civil Proceedings, the allegations are premised on Defendants' role in causing Blue Lake to bring the Tribal Court action. "It is well established that the anti-SLAPP statute applies to malicious prosecution actions." (*Johnson v. Ralphs Grocery Co*. (2012) 204 Cal.App.4th 1097, 1104.) "[B]y its terms, section 425.16 potentially may apply to every malicious prosecution action, because every such action arises from an underlying lawsuit, or petition to the judicial branch." (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 734-735.)

As to the fifth and seventh causes of action for Aiding and Abetting Breach of Fiduciary Duty, and Aiding and Abetting Constructive Fraud, the allegations and arguments are premised on Defendants creating Judge Marston's conflict of interest by hiring him to perform work outside the litigation, including to act as counsel in an unrelated action, their failure to disclose that information, and their participation in the Tribal Action.

In the complaint, Plaintiff attempts to avoid the reach of the statute by alleging that the claims are "not subject to a Section 425.16 special motion to strike" because it "encompasses conduct that was illegal as a matter of law." (Comp. ¶ 143.) However, an allegation that something is illegal as a matter of law

does not establish that it in fact is. Here, Defendants have not conceded the illegality of the conduct and Plaintiff presents no evidence to conclusively establish that the conduct is criminal as a matter of law. The opposition makes no effort to explain how the alleged conduct was illegal as a matter of law and further, with regard to arguments that Ramsey was not entitled to hire Marston as an attorney, Plaintiff confirms he "does not press his 'illegal as a matter of law' argument." (Opposition, p. 7:9.)

Plaintiff does, however, argue Defendants cannot satisfy prong one because there is no constitutional right to petition tribal courts. In support of that argument, he cites to authority that Congress has "plenary authority to limit, modify or eliminate the powers of local self-government which the tribes possess." (*Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49, 56.) He argues that because in the past, Congress has abolished tribal courts through statutes that this is proof there is no constitutional right to petition tribal governments because constitutional rights cannot be eliminated by statute. The Court previously rejected this argument in its September 16, 2022 order granting Defendants Boutin Jones, Inc., Michael Chase, Daniel Stouder and Amy O'Neill's (collectively "Boutin Jones") special motion to strike. (ROA 287.) As the Court stated in its ruling:

"Traditionally, tribes are considered "separate sovereigns pre-existing the Constitution, tribes have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority." (*United States v. Bryant* (2016) 579 U.S. 140, 149 [quoting *Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49, 56.). While Boutin Jones does not directly address this authority, the Court notes that "[a]n exception to this rule exists, however, when the provisions of the Constitution 'are made applicable [to tribes] by an Act of Congress.' 'The Constitution is, of course, the supreme law of the land, but it is nonetheless a part of the laws of the United States. Under the philosophy of the decisions, it, as any other law, is binding upon Indian nations only where it expressly binds them, or is made binding by treaty or some act of Congress.'" (*People v. Ramirez* (2007) 148 Cal.App.4th 1464, 1470 [citations omitted].) To that end, "Section 1302 of the Indian Civil Rights Act ("ICRA") is one such act of Congress." (*Id*.) In *Ramirez*, the Third District Court of Appeal found that the ICRA contained language that was "for all intents and purposes identical to the language of the Fourth Amendment" and "thus evidences an intent to extend the Fourth Amendment's prohibition against unreasonable searches and seizures to tribal governments through enacting Section 1302(2) of the ICRA. (*Id*. at 1470-1471.) "This intent is confirmed by the legislative history of the Indian Civil Rights Act. '[A] central purpose of the [Indian Civil Rights Act] ... was to 'secur[e] for the American Indian the broad constitutional rights afforded to other Americans,' and thereby to 'protect individual Indians from arbitrary and unjust actions of tribal governments.' ' (*Santa Clara Pueblo v. Martinez, supra*, 436 U.S. at p. 61 quoting Sen.Rep. No. 841, 90th Cong., 1st Sess., pp. 5–6 (1967); see generally Burnett, An Historical Analysis of the 1968 "Indian Civil Rights" Act (1972) 9 Harv.J. on Legis. 557.)." (*Id*. at 1470.)

Relevant here, the text of the First Amendment of the United States Constitution provides as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." (U.S. Const., 1st Amend.) Section 1302 of the ICRA, titled "Constitutional Rights" provides that no tribe shall "make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances." (25 USC § 1302(a)(1).) Section 1302(a)(1) is "for all intents and purposes identical to the language of the First Amendment" and thus reflects an intent to extend the First Amendment's right to petition for a redress of grievances to tribes. Thus, Congress has bound tribes to the First Amendment through the ICRA and therefore extended the protections of the First Amendment's constitutional right to petition tribal courts to tribes through the ICRA. As a result, the Court rejects Plaintiff's assertion that there is no constitutional right to petition tribal courts." (ROA 287.)

The Court finds the same rationale applies to the circumstances of this motion. Plaintiff argues *Ramirez*

is not good law because the Supreme Court confirmed in *Plains Commerce Bank v. Long Family Land & Cattle Co.* (2008) 554 U.S. 316, 337 ("*Plains*") that the "Bill of Rights does not apply to Indian tribes." However, *Ramirez* recognizes this general rule and analyzes an exception to the rule not discussed in *Plains*. Further, *Ramirez* has been cited favorably since the decision in *Plains*. (See, e.g., *United States v. Nealis* (N.D. Okla. 2016) 180 F.Supp.3d 944, 948; *State v. Madsen* (SD 2009) 760 N.W.2d 370, 376.) Thus, the Court finds *Ramirez* remains good law.

Given the above, the Court need not address Plaintiff's assertion that there is no right to petition tribal courts under the California Constitution. Indeed, CCP § 425.16(b)(2) applies to an act in furtherance of the right to petition "under the United States Constitution or the California Constitution" as required under CCP § 425.16(b)(1).)

Plaintiff's argument that Blue Lake itself does not have any constitutional rights is also rejected. First, Plaintiff cites no authority for that proposition. In any event, CCP § 425.16 applies even where, a government entity engages in conduct which would fall within the scope of the statute if the conduct were engaged in by a private individual or entity. (*Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 17 [noting that this conclusion applies whether or not the government entity has direct protection under the First Amendment of the US Constitution or Article I, § 2 of the California Constitution].) Second, Blue Lake is not the defendant in this action. As determined on appeal of the motion to quash or dismiss, Blue Lake will not be liable for the actions of the individual Defendants.

There is no reasonable dispute the Defendants, as individuals, have constitutional rights. The pertinent question is therefore whether the Defendants' participation in the Tribal Action is a valid exercise of their right to petition such that it is protected by Code of Civ. Proc. § 425.16. There is no question that the Tribal Court action is a judicial proceeding or other proceeding authorized by law. In fact, federal law requires states to give full faith and credit to various tribal court orders including tribal court custody orders and child support orders. (E.g. 25 USC § 1911(d), 28 USC § 1738B.) In addition, California law provides a process allowing trial courts to enforce tribal court money judgments and also require full faith and credit be given to tribal court custody orders. (CCP § 1730 et seq.; Welf. & Inst. Code § 224.5.) Holding that participating in litigation in a tribal court is not protected would conflict with the mandate to construe the statute broadly (Code Civ. Proc. § 425.16(a)) and could result in the anomalous situation where efforts to enforce a tribal court judgment in state court is protected activity while the actions taken to obtain the money judgment in tribal court are not.

Plaintiff also argues that the fifth and seventh causes of action for Aiding and Abetting Breach of Fiduciary Duty, and Aiding and Abetting Constructive Fraud are not subject to the anti-SLAPP statutes because he claims they involve allegations of "suborning a judge" based on Defendants' action in hiring Judge Marston as an attorney while he presided over the Tribal Action. However, at least one of those instances, Ramsey hiring Marston as an attorney in a separate civil action, is protected activity. Plaintiff also expressly argues the fifth and seventh causes of action are based not only on Defendants' actions in hiring Judge Marston outside of the Tribal Action, but also "by litigating *Blue Lake v. Acres Bonusing* in front of Judge Marston . . . ." (Opposition, pp. 13:17-18 and 14:21-22.) When a cause of action includes both protected and unprotected activity, the first prong is satisfied and the plaintiff is required to establish a probability of prevailing on a claim for relief based on the protected activity. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 395.)

All of the causes of action alleged against Defendants arise from petitioning activity under CCP § 425.16(e). The burden thus shifts to Plaintiffs to "demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment." (*Premier Med. Management Systems, Inc.*, supra, 136 Cal.App.4th at 476.)

Second Prong--Probability of Prevailing

To satisfy this prong, Plaintiff must "demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment." (*Premier Med. Management Systems, Inc. v. California Ins. Guarantee Assn.* (2006) 136 Cal.App.4th 464, 476.) Plaintiff need only demonstrate minimal merit. (*Grewal v. Jammu* (2011) 191 Cal.App.4th 977, 989.) In making this determination, the Court does "not weigh credibility, nor do[es] [it] evaluate weight to the evidence. Instead, [the Court] accepts as true all evidence favorable to the plaintiff and assesses the defendant's evidence only to determine if it defeats the plaintiff's submission as a matter of law." (*Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 699-700.) The required showing is not "high." (*Id*. at 700.) However, the "prima facie showing of merit must be made with evidence that is admissible at trial. (*Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1289.) Verified allegations in the complaint may be considered as evidence where they are based on personal knowledge. (*Id*. at p. 1290.)

The Court finds Plaintiff has failed to present sufficient evidence to show a probability of prevailing. The only evidence submitted by Plaintiff is a declaration and excerpts from the motion granting summary judgment in the Tribal Action. Defendants' objections to the evidence are sustained, except as to ¶ 3, 6, and 16. Paragraph 3 of Plaintiff's declaration offers excerpts from the order granting summary judgment in the Tribal Action as evidence that Defendants acted maliciously in prosecuting that action against Plaintiff. As Defendants note, Plaintiff did not make a proper request for judicial notice of this order. Nonetheless, as Defendants raise no dispute as to the accuracy and authenticity of the order, the Court will consider it. While the Court will take judicial notice of the summary judgment order, "[j]udicial notice is properly taken of the existence of a factual finding in another proceeding, but not of the truth of that finding." (*Steed v. Department of Consumer Affairs* (2012) 204 Cal.App.4th 112, 120.) Thus, Plaintiff cannot meet the burden to present evidence that Defendants engaged in malicious prosecution merely by referencing factual findings in the order granting summary judgment.

The remaining relevant portions of Plaintiff's declaration are asserted on "information and belief" and based on a review of documents and witness interviews that were not themselves presented as evidence. For example, Plaintiff indicates he reviewed emails and declarations from Defendant, publicly available documents about them and interviewed former Blue Lake executives that worked with Defendants. (Acres Decl., ¶ 4.) Based on this research, Plaintiff is "informed and believes" that Frank suggested naming Plaintiff as a defendant in the Tribal Action and Ramsey approved of the plan. (Acres Decl., ¶ 5.) However, Plaintiff did not submit and authenticate any of the documents reviewed and did not provide affidavits from any of the witnesses interviewed. Personal knowledge, not information and belief based on hearsay evidence not before the Court, is the standard for admitting evidence. (Evid. Code § 702.)

Plaintiff also relies on Defendants' own declarations as evidence that Frank served as a liaison between Blue Lake's Business Council and Boutin Jones and had knowledge of Blue Lake's beliefs when it commenced the action. Similarly, Plaintiff notes Ramsey declared fixing the problems with iSlot would not be worth what Plaintiff proposed to charge. Even if these allegations are arguably minimally sufficient to show Defendants were involved in the decision to pursue claims against Plaintiff, they do not satisfy the third element that Defendants lacked reasonable grounds for encouraging Blue Lake to pursue the claims. The mere fact that Plaintiff actually prevailed in the Tribal Action is insufficient to support a cause of action for malicious prosecution. Despite claiming to have reviewed documents and interviewed witnesses that could provide evidence Defendants' did not have reasonable grounds for causing Blue Lake to pursue the action, Plaintiff failed to actually provide such evidence. Thus, Plaintiff has failed to show a reasonable probability of prevailing on the third element of the first cause of action.

Similarly, Plaintiff has failed to support the fifth and seventh causes of action with admissible evidence. Plaintiff references billing records and checks purportedly showing Judge Marston was hired as an

attorney by Blue Lake for other work facially unrelated to the Tribal Action. Again, however, Plaintiff failed to provide the actual documents as evidence. Further, Plaintiff argues Judge Marston's breach was the failure to disclose the alleged conflict of interests. Plaintiff does not argue it was improper for Judge Marston merely to accept work that created a conflict or for Defendants to hire him for such work. Thus, evidence the Defendants hired Judge Marston for activities that created a conflict of interest does not establish Defendants substantially assisted Judge Marston in failing to disclose the conflict. Although Plaintiff argues Judge Marston was hired as a bribe, Plaintiff admits this is based on "information and belief," not personal knowledge, and did not present the actual evidence that supports that belief. (Plaintiff Decl., ¶ 11.) Plaintiff has therefore failed to present evidence beyond mere speculation and conjecture that Defendants assisted Judge Marston in failing to disclose the conflict of interest.

Finally, as noted above, Plaintiff's opposition concedes the fifth and seventh causes of action are based not only on Defendants' actions in hiring Judge Marston outside of the Tribal Action, but also "by litigating *Blue Lake v. Acres Bonusing* in front of Judge Marston . . . ." (Opposition, pp. 13:17-18 and 14:21-22.) Defendants' participation in the litigation before Judge Marston is protected activity and is subject to the litigation privilege. (Civil Code § 47.) Thus, Plaintiff cannot meet the burden of showing a reasonable probability of prevailing on the fifth and seventh causes of action based on the protected activity. (*Baral v. Schnitt*, *supra*, 1 Cal.5th at p. 395.)

In conclusion, Defendants have shown that the entire complaint arises from an act "in furtherance of [their] right of petition or free speech" and Plaintiff failed to establish "that there is a probability that [he] will prevail on the claim." The motion to strike Plaintiff's complaint pursuant to CCP § 425.16 is granted.

Defendants may seek attorneys' fees pursuant to CCP § 425.16(c) as the prevailing party by way of a separately noticed motion.

Defendants shall submit a formal order pursuant to CRC 3.1312.

COURT RULING

There being no request for oral argument, the Court affirmed the tentative ruling.