ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
K. ERIK FRIESS (BAR NO. 149721)
BRIAN R. BAUER (BAR NO. 238368)
1900 Main Street, Fifth Floor
Irvine, California 92614-7321
Phone: (949) 553-1313
Fax: (949) 553-8354
E-Mail: rfriess@allenmatkins.com
bbauer@allenmatkins.com

Attorneys for Plaintiff THE BISHOP OF THE PROTESTANT EPISCOPAL CHURCH IN LOS ANGELES

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

THE BISHOP OF THE PROTESTANT EPISCOPAL CHURCH IN LOS ANGELES, a California corporation sole,

Plaintiff,

v.

GRIFFITH COMPANY, a California corporation; and DOES 1-50, inclusive,

Defendants.

Case No. 30-2015-00795665-CU-OR-CJC

ASSIGNED FOR ALL PURPOSES TO Judge Walter Schwarm, Dept. C42

Date: November 3, 2015
Time: 1:30 p.m.
Dept.: C42

OPPOSITION OF PLAINTIFF THE BISHOP OF THE PROTESTANT EPISCOPAL CHURCH IN LOS ANGELES TO SPECIAL MOTION OF DEFENDANT GRIFFITH COMPANY TO STRIKE THIRD CAUSE OF ACTION OF PLAINTIFF'S COMPLAINT AND REQUEST FOR AWARD OF ATTORNEYS' FEES

[Filed concurrently with Objections to Evidence in Support of Special Motion to Strike; Compendium of Evidence in Support of Opposition; Request for Judicial Notice and Notice of Lodging of Deposition Videos]

Complaint Filed: June 26, 2015
Trial Date: Not Set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

California Cases

Page(s)

California Statutes

1. INTRODUCTION.

In June 2015, plaintiff The Bishop of the Protestant Episcopal Church in Los Angeles ("Church") was about to close the sale of a church property in Newport Beach. Bob Voorhees, a church member and the spouse of the church's priest, disagreed with the Church's decision. And Mr. Voorhees immediately embarked on an aggressive campaign to disrupt the sale by "doing everything we can to preserve the property." Unfortunately, he found a willing co-conspirator in defendant Griffith Company ("Griffith"), the now-employee-owned company that in 1945 originally deeded the property to the Church. Together, Griffith and Voorhees conspired for Griffith to make a claim on the Church's property based on a church-use restriction in the 1945 deed (but in 1984 quitclaimed to the Church for $800,000). Specifically, Griffith repeatedly claimed, orally and in writing, that the church-use restriction remained enforceable notwithstanding undisputed evidence that the 1984 quitclaim released it. Griffith repeatedly published this claim to Voorhees, knowing well that Voorhees would republish it to ensure the buyer of the Church's property would delay the purchase. This strategy worked and has prevented, and continues to prevent, the Church's sale. And Griffith refuses to rescind its claim and continues to publish it.

Seeking a free pass from the damage it has caused, Griffith now asks this Court to absolve its bad acts by striking the Church's slander of title cause of action under the anti-SLAPP statute. The anti-SLAPP statute affords no such pardon. Griffith's motion fails each required prong. First, Griffith's repeated publications of its slander do not qualify as "protected activity" under the statute. Griffith's motion focuses on only one of its many publications: a June 10, 2015, letter from Griffith's attorney to the Church. This means Griffith's motion fails to establish that its many other publications – made both before and after that letter (and their many republications) – are protected activity. But even that June 10 letter is not protected. The letter was not "litigation" protected because Griffith explicitly, and repeatedly, disavowed any intent to engage in court action. And the letter was not protected public speech because the narrow subject of whether Griffith has a title interest in the Church property is only incidental to the public questions of whether the City should rezone the property or even whether the Church made the right decision to sell. Second, the Church can easily show a *prima facie* case of "minimal merit." The evidence shows that Griffith

repeatedly published false statements that the use-restriction remained enforceable in the face of uncontradicted evidence that the 1984 quitclaim was intended to, and in fact did, release the use restriction – and that Griffith first sought a tax deduction, and then was paid $800,000, for this release. Accordingly, the Court can and should deny Griffith's motion.

2. STATEMENT OF FACTS.

A. The Property Acquisition and Later Release Of The Church-Use Restriction.

The Church owns a church property on the Balboa Peninsula in Newport Beach. The Church acquired this property from Griffith by a July 10, 1945, deed ("1945 Deed"). (Church's Compendium of Evidence ("Evid."), ¶ 1.) The 1945 Deed contains a church-use restriction – "The property conveyed shall be used for church purposes exclusively . . ." – and provides for the property to revert to Griffith if the use restriction is violated. (*Ibid*.)

The growth of the congregation created parking and other space issues at the Church's property. (Evid., ¶ 2.) And by 1977, church leadership considered selling the property to fund the purchase a larger property off the Peninsula. (*Ibid*.) But, the church-use restriction limited the property's value. (*Ibid*.) In 1982, the church leadership formed a committee to negotiate removal of the church-use restriction and to seek out a new, larger property. (Evid., ¶ 3.) The Church's property would fund the purchase, since the removal of the church-use restriction would increase the property's value. To this end, Frank Trane, a member of the congregation appointed as the land negotiator, approached Griffith about lifting the church-use restriction. (*Ibid*.)

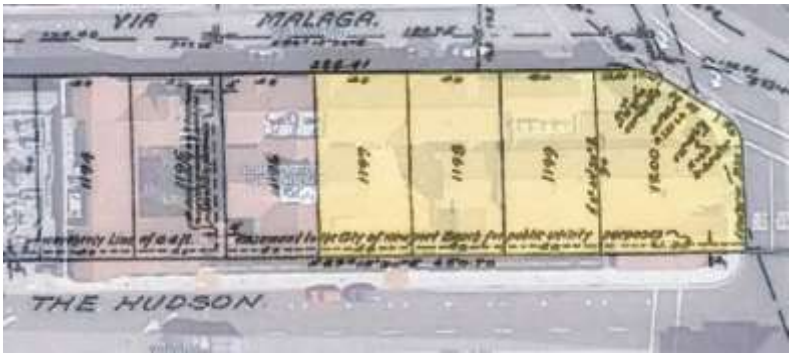
B. For $800,000, Griffith Executed The 1984 Quitclaim, Releasing The Church-Use Restriction From The Church Property.

On January 18, 1984, Griffith executed a quitclaim ("1984 Quitclaim"). (Evid., ¶ 4.) The 1984 Quitclaim explicitly states that "Griffith Company . . . hereby REMISES, RELEASES AND QUITCLAIMS . . . Lots 1197, 1198 and 1200 of Tract No. 907 . . .. [¶] Griffith Company specifically releases the Reverter interest reserved in a Corporation Grant Deed dated July 10, 1945 . . .." (*Ibid*.) Both Donald McGrew and Robert Molko (who signed the 1984 Quitclaim on behalf of Griffith and who have been designated by Griffith as persons most knowledgeable regarding the 1984 Quitclaim) recalled at deposition that Griffith looked into a tax deduction related to the 1984

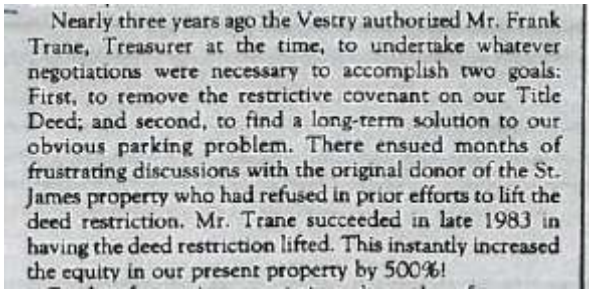
Quitclaim. (Evid., ¶ 5.) But instead of Griffith's making a donation, Frank Trane, the Church's negotiator, paid Griffith $800,000 for the quitclaim deed:

> [T]he property with the reverter was worth $200,000 and without was $1,000,000. The difference of $800,000 was the value to the donor. So [Frank Trane] went to Griffith and offered them the 800,000 to dismiss the reverter and Griffith did so – all on a "handshake". Frank Trane spent his own money and wrote Griffith a check. [Evid., ¶ 6.]

The original Griffith deed transferred four lots, but one lot – lot 1199 – is not listed on the 1984 Quitclaim. (Evid., ¶ 7.) Lot 1199 sits in the middle of the church building (*Ibid.*):



Neither of the two Griffith officers who signed the 1984 Quitclaim nor any other Griffith representative could give an explanation for why lot 1199 was left off – other than that this was a typo. (Evid., ¶ 8.) Consistent with this, Frank Trane has confirmed both publicly and to the church's priest that the exclusion of lot 1199 was a typo or "scrivener's error." (Evid., ¶ 9.) And no post- 1984-Quitclaim documents evidence the continued existence of the church-use restriction on any lots. (Evid., ¶ 10.) Instead, all meeting minutes and other documents show that the restriction was completely released, freeing up the Church to sell, or borrow against the full value of, the property. (Evid., ¶ 11.) For example, 1985 Vestry Minutes confirm Frank Trane "was successful last year in the lifting of the deed restriction; and market value has increased from approximately $200,000 to $1,000,000" (*Ibid.*) Likewise, a 1985 newsletter reported (*Ibid.*):


Nearly three years ago the Vestry authorized Mr. Frank Trane, Treasurer at the time, to undertake whatever negotiations were necessary to accomplish two goals: First, to remove the restrictive covenant on our Title Deed; and second, to find a long-term solution to our obvious parking problem. There ensued months of frustrating discussions with the original donor of the St. James property who had refused in prior efforts to lift the deed restriction. Mr. Trane succeeded in late 1983 in having the deed restriction lifted. This instantly increased the equity in our present property by 500%!

Further, Donald McGrew, who signed the 1984 Quitclaim as Griffith's President, disavowed that George Griffith (the last Griffith involved with the company prior to its sale to its employees) intended to retain a church-use restriction on any portion of the property. (Evid., ¶ 12.)

C. The Church Decided To Sell The Property.

Previously, this same church property was part of a dispute that arose when the Episcopal Church consecrated a gay bishop, prompting that congregation to break away and claim ownership of the property; that effort failed. (Evid., ¶ 13; *Episcopal Church Cases* (2009) 45 Cal.4th 467.) Later, the Church started a new congregation in late 2013. (*Ibid*.) But after substantial consideration, the Church decided that the small congregation did not justify the amount of Church resources it was using, and the Church decided to sell the property and deploy the proceeds for larger church purposes. (Evid., ¶ 14.) Ultimately, the Church contracted to sell to Legacy Partners Residential, LLC for approximately $15 million, with a sale to close on June 24, 2015. (*Ibid*.)

Bob Voorhees, a member of the new congregation and the husband of the congregation's priest vehemently disagreed with the Church's decision. (Evid., ¶ 15.) And he began a campaign to disrupt the sale by "doing everything we can to preserve the property." (*Ibid*.) As part of this campaign, Voorhees attacked Bishop J. Jon Bruno as "an intimidating bully," "vindictive," "vengeful," "a piece of work," "not good at all," and with a "greed for money." (Evid., ¶ 16.)

D. Griffith Collaborated In Voorhees' Sale-Disruption Campaign By Publishing The First Of Many Claims That Griffith Can Still Enforce The Use Restriction.

On June 6, 2015, Voorhees contacted Griffith seeking "to talk with you about supporting the preservation of the property." (Evid., ¶ 17.) Voorhees motivated Griffith to action with promises of development opportunities on the parking lots and of positive press. (*Ibid*.) For example, in Voorhees' initial June 6 email to Griffith, he promised Tom Foss (Griffith's CEO and Chairman of the Board) and Jamie Angus (Griffith's President) a reward for Griffith's cooperation:

> We, as the local congregation, would not only be very appreciative … but *we would make sure that some very positive press and community good is created for the Griffith Company*.

(*Ibid*.) That same day, Voorhees talked with Griffith's Angus, and Voorhees explained he was seeking Griffith's assistance to stop the sale of the Church's property. (Evid., ¶ 18.) Griffith's

Angus immediately assured Voorhees "*that [Griffith] would not waive the restriction*, especially if [the Church was] trying to profit, ..." (*Ibid.*) With Griffith's assertions that the church-use restriction remained on the Church's property and that Griffith would not "waive" it, Griffith's Angus provided Voorhees with a cloud on the Church's property; and Voorhees went to work, republishing it numerous times to numerous individuals. (Evid., ¶¶ 18, 28.)

E. Griffith's Investigation Revealed The Church-Use Restriction Was Released, Yet Griffith Continued To Publish Its Claim On The Church's Title.

Following Griffith's first discussions with Voorhees about the church-use restriction, on June 8, 2015, Griffith obtained from a title company copies of documents showing the relationship of the four parcels deeded in 1945 to the church buildings (specifically, the buildings cover all four lots). (Evid., ¶19.) Also, on June 8, Voorhees sent Griffith a copy of the 1984 Quitclaim, admitting it was a "cause for disappointment and concern." (Evid., ¶ 20.)

Nonetheless, Voorhees continued to look for an "opportunity of time to" delay and prevent the sale. (Evid., ¶21.) To that end, Voorhees sent another email to Angus on June 9, which again, while acknowledging the broad release set forth in the 1984 Quitclaim, nonetheless notes that that deed "'. . . specifically releases the Reverter interest reserved" and "only lists three properties (1197, 1198?/1199?, 1200)" and asks whether there is "an opening we can utilize in this omission." (*Ibid.*) Griffith's Angus responded to Voorhees' request with a June 9 email, where Angus asserts that the failure to include lot 1199 in the 1984 Quitclaim's legal description was because:

> It is my understanding that the 3 lots are the parking lot, the fourth is the church. This comes from Don McGrew spoke to him this morning.

(Evid., ¶ 22.) But at deposition McGrew testified that he told Angus no such thing. (*Ibid.*) And the documents Griffith obtained from the title company clearly showed that the church buildings covered all four lots, with none used for parking. (Evid., ¶ 19.) On June 9, even Voorhees told Angus that "[t]he 4 lots are all part of the land the church building is on" and on June 10 reiterated to Angus that lot 1199 was "right in the middle of the church building." (Evid., ¶ 23.)

Apparently recognizing that Angus' parking-lot story was untenable, Voorhees again reached out to Angus in a June 10 email, stating that "[w]e are trying to understand why Griffith

Company would have this later interest or intent to reverse the intention of a very specifically restricted original deed" and seeking more "collaborating" with Griffith to stop the property's sale. (Evid., ¶ 24.) To gain this "collaboration," Voorhees' proposed "a win-win-win scenario for everyone involved," again reminding Griffith of "development opportunities with the parking lot we own across the street to enhance parking [sic, and] develop something on that property" that could "be done in conjunction with the Griffith Company." (*Ibid*.) As he later explained, Voorhees' concept was that Griffith could profit as the contractor on such a project. (*Ibid*.)

F. Griffith Next Published Two Additional Claims on Title: (1) Griffith's Lawyer Sent A June 10 Letter To The Church; And (2) Griffith's President Sent An Unsigned Draft Of The Letter To Bob Voorhees (For His Further Publication).

Continuing Griffith's collaboration with Voorhees, Griffith's attorney, Ronald Pierce, sent a letter to the Church that repeated Griffith's president Angus' earlier claims regarding Griffith's interest in the Church property. (Evid., ¶ 25.) In that June 10, 2015, letter, Griffith again makes the parking claim, asserting that "in 1984 … the church wanted to use the three lots adjoining the central church building lot for parking purposes to facilitate their primary church purpose." (*Ibid*.) Pierce's letter also states that Griffith "never released" the church-use restriction "for the central church building lot, or the adjoining lots from their ancillary role to serve 'church purposes' solely." (*Ibid*.) Griffith's CEO acknowledged at deposition that he knew that the Church would be compelled to disclose this letter to the buyer, Legacy (which the Church in fact did). (Evid., ¶ 26.)

In addition to Pierce's publication of his June 10 letter to the Church, Angus emailed an unsigned draft directly to Voorhees. (Evid., ¶ 27.) Voorhees immediately circulated the letter among numerous individuals, who republished it, and even published the letter on the Save's website and distributed it broadly to an undisclosed email list of possibly hundreds. (Evid., ¶ 28.)

Then, armed with the unsigned draft of Griffith's June 10 letter and other Griffith publications, Voorhees and others formed "Save St. James the Great," a purported unincorporated entity. (Evid., ¶ 29.) On June 22, 2015, Voorhees and his self-appointed "Save" group sued the Church, seeking enforcement of the 1945 Deed and expressly based the suit on Griffith's repeated statements that the church-use restriction had not been released. (*Ibid*.) The Church continues to incur

attorneys' fees defending against this action. (Evid., ¶ 40.)

G. Griffith's Continued Refusal To Retract Its Cloud On Title.

Thinking Griffith was simply confused, on June 15 the Church responded to Griffith's June 10 letter, and pointed out that Griffith's claim that the church-use restriction was kept on lot 1199 because the other lots were for parking made no sense because "such a configuration is impossible, as the fourth lot is a narrow one that lies in the middle of a church building. Further, none of the four lots have ever been put to parking use." (Evid., ¶ 30.) The Church followed up with a June 17 letter that provided church records, including the Vestry Minutes and Newsletters, that demonstrate that the church-use restriction had been completely released by the 1984 Quitclaim. (Evid., ¶ 31.) Nonetheless, Griffith would not retract its claim. (Evid., ¶ 32.)

Instead, Voorhees and Griffith continued to "coordinate efforts" to find "both temporary and permanent measures to delay and eventually prevent the sale," hoping to "create enough pressure . . . within the Episcopal Church and with the developer to stop the sale . . .." (Evid., ¶ 33.) For its part, Griffith said it "is working on it" and "has some ideas if u would like to support the financial end of it." (*Ibid*.) Implementing this plan, Griffith, Voorhees, and Voorhees' group continued to publish and republish Griffith's title claim. (Evid., ¶ 28.)

To this day, Griffith has not retracted its title claim and has done nothing to counteract its and Voorhees' repeated publications of this claim. (Evid., ¶ 32 [Griffith's Answer, ¶ 9 asserting that "GRIFFITH COMPANY 'never released' any of the 'church purposes exclusively' use restriction . . .."] Left with no other choice, the Church instituted this action.

3. <u>THE LEGAL STANDARDS IN RULING ON A SLAPP MOTION</u>.

SLAPP motions are very serious; they stop a lawsuit in its tracks and threaten dismissal of the suit and payment of attorneys' fees and costs. (Code Civ. Proc., § 425.16.) Notably, the Legislature has found "a disturbing *abuse* of" a SLAPP motion "which has *undermined* the exercise of the constitutional rights of freedom of speech and petition for the redress of grievances, *contrary* to the purpose and intent of" the statute. (Code Civ. Proc., § 425.17, subd. (a), emphasis added.)

The statute creates a two-prong test for a SLAPP motion: *first*, "the court decides whether the [moving party] has made a threshold showing that the challenged cause of action is one *arising*

from protected activity." (*Contemp. Svcs. Corp. v. Staff Pro Inc.* (2007) 152 Cal.App.4th 1043, 1052, emphasis added.) If – *but only if* – the moving party meets the first prong is the *second* prong triggered, and the opposing party "must show a probability of prevailing on the claim." (*Ibid.*) If necessary, the opposing party meets this burden "by showing the complaint is both legally sufficient and is supported by a prima facie showing of facts sufficient to sustain a favorable judgment . . .." (*Ibid.*) The required showing is one of "minimal merit." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89, 93-95, & fn. 11.)

4. FIRST PRONG: THE CHURCH'S SLANDER OF TITLE CAUSE OF ACTION DOES NOT "ARISE FROM" ANY "PROTECTED ACTIVITY".

Griffith's repeated publications of its slander do not qualify as "protected activity" under the statute. To begin, Griffith's motion focuses on only *one* of its many publications: the June 10 letter from Griffith's attorney to the Church. Griffith's motion does *not* address, and therefore fails to establish, that its many other publications – made before and after that letter (and their many republications) – are protected activity. Those other publications include (i) Angus' June 6, 8, and 9 statements to Voorhees that the church-use restriction remained on the Church's property and that Griffith would not "waive" it, (ii) Angus' sending an unsigned draft of Pierce's June 10 letter directly to Voorhees, and (iii) Voorhees', Griffith's, and their cohorts' numerous subsequent publications and republications of Griffith's statements (including republication on Save's website). Since Griffith's motion fails to even address those publications, the Court should deny the motion.

As to the one publication the motion addresses – the June 10 letter sent by Pierce, Griffith's attorney – that letter does not qualify as "protected activity" for three reasons.

First, Griffith asserts that the Pierce letter is protected because it was "made in connection with litigation." (Motion, p. 14.) Wrong. Civil Code section 47 provides a privilege for a publication made in a "judicial proceeding," but the privilege only "arises at the point in time when litigation is no longer a mere possibility, but has instead ripened into a *proposed proceeding* that is actually *contemplated in good faith and under serious consideration as a means of obtaining access to the courts for the purpose of resolving the dispute*." (*Edwards v. Centex Real Estate Corp.* (1997) 53 Cal.App.4th 15, 39 ["[T]he mere potential . . . that judicial proceedings 'might be

instituted' in the future is insufficient"); *see also Haneline Pacific Properties, LLC v. May* (2008) 167 Cal.App.4th 311, 319.) Here, Griffith's CEO Foss testified he instructed Pierce to send the letter, *not* as a precursor to litigation, but rather to "understand … the intent of" the Griffith family and to "open communication" with the Church. (Evid., ¶ 34.) Indeed, contrary to Pierce's self-serving declaration that "the matter would be headed to active litigation" (Pierce carefully avoid stating that *Griffith* planned litigation), Pierce testified that his purpose was "a private meeting, not public conversation, with Bishop Bruno or representatives on his behalf about whether the church purposes exclusively restriction or the reverter had any . . . continuing legal effect." (*Ibid.*)

Rather than litigate, from the start Griffith sought *to avoid* litigation, as, *e.g.*, Voorhees confirmed in a later email: "I remember clearly in our initial conversation that [Angus] stated that Griffith Company did not want to get in a protracted legal situation . . .." (Evid., ¶ 35.) Angus agreed, stating "We do not need more lawsuits." (*Ibid.*) In sum, Griffith *never* intended litigation, thus its June 10 letter was *not* a "contemplated" precursor to litigation. To this day, Griffith has not filed suit. (See *Eisenberg v. Alameda Newspapers* (1999) 74 Cal.App.4th 1359, 1377 [attorney letter not litigation privileged, where purpose was to avoid, rather than initiate, litigation].)

Second, Griffith asserts that the letter is protected as being made "in a place open to the public or a public forum." (Motion, p. 13-14.) Wrong again. According to its author, Pierce, the letter was a *private* letter, not made in a public forum. Pierce testified he "wrote a private letter." (Evid., ¶ 35.) Indeed, Griffith's verified Answer states "GRIFFITH COMPANY *privately* raised the issue of the intent of the 1945 and 1984 deeds and their legal effect for today in GRIFFITH COMPANY's June 10, 2015 letter to THE BISHOP *only*." (RFJN, Exh 8, emphasis added.)

Third, Griffith asserts that the June 10 letter is protected because it was "made in connection with a *public issue* or an *issue of public interest*." (Motion, pp. 9-13.) However, Griffith's claim improperly mixes the narrow claim of a right to enforce a deed restriction into much larger, but only tangential, issues: namely broader City zoning issues and policy issues of the greater Episcopalian Church. The right to enforce a deed restriction is completely "incidental" to any public issues of zoning changes by the City or even the Church's general policy decision to sell the property. (See *Episcopal Church Cases* (2009) 45 Cal.4th 467.) Indeed, in *Episcopal Church*

Cases, the California Supreme Court *rejected* application of the SLAPP statute to a similar property dispute, finding that "[t]he additional fact that protected activity may lurk in the background . . . does not transform a property dispute into a SLAPP suit." (*Id*. at 478.) The same is true here. Although a *general* interest in the Church's continued ownership may exist, Griffith's specific act of sending *private* communications slandering the Church's *title* does not qualify as protected activity. (See also *Martinez v. Metabolife International, Inc*. (2003) 113 Cal.App.4th 181, 188 ["[W]hen the allegations referring to arguably protected activity are only incidental to a cause of action based essentially on nonprotected activity, collateral allusions to protected activity should not subject the cause of action to the anti-SLAPP statute."].) Thus, Griffith's June 10 letter is not protected; Griffith has failed to satisfy the first prong.

5. SECOND PRONG: THERE IS A PROBABILITY THAT THE CHURCH WILL PREVAIL ON ITS SLANDER OF TITLE CLAIM.

The Church's slander of title claim easily passes the "minimal-merit" test of the second SLAPP prong because a probability exists that the Church will prevail. (Code Civ. Proc., § 425.16(b)(1).) An opposing party "need not prove the validity of the challenged claims . . ., [the party] . . . need only demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by plaintiff is credited." (*Drum v. Bleau, Fox & Associates* (2003) 107 Cal.App.4th 1009, 1018.) In deciding if a *prima facie* case exists, a court "does *not* weigh credibility or compare the weight of the evidence." Rather, the court is "to *accept as true* the evidence favorable" to the opposing party. (*HMS Capital, Inc. v. Lawyers Title Co*. (2004) 118 Cal.App.4th 204, 212, emphasis added.)

A. The Law On Slander Of Title.

"The elements of a cause of action for slander of title are '(1) a publication, (2) which is without privilege or justification, (3) which is false, and (4) which causes direct and immediate pecuniary loss.'" (*Alpha and Omega Development, LP v. Whillock Contracting, Inc*. (2011) 200 Cal.App.4th 656, 664.) Slander of title is a publication that "would lead a reasonable person to foresee that a prospective purchaser . . . might abandon his intentions. (Rest., Torts, § 624.) It is an invasion of the interest in the vendibility of property. … [A]ctual malice or ill will is

unnecessary. [Citations] To be disparaging a statement need not be a complete denial of title in others, but may be any unfounded claim of an interest in the property which throws doubt upon its ownership." (*Phillips v. Glazer* (1949) 94 Cal.App.2d 673, 677, emphasis added.)

B. Griffith's Repeated Publications That It Did Not Release The Restriction.

As noted, Griffith published repeated statements that the church-use restriction remained enforceable, including: (1) Griffith's Angus' June 6 and 8 statements to Voorhees; (2) Angus' June 9 email to Voorhees stating that lot 1199 was omitted from the 1984 Quitclaim because it "is the church" and the other lots are "the parking lot"; (3) Angus' sending an unsigned draft of Pierce's June 10 letter directly to Voorhees; and (4) Griffith's attorney Pierce's June 10 letter to the Church.

But there is more. The originator of slanderous material is also liable for each *repetition* of that material, so long as such repetitions were reasonably foreseeable. (*Di Giorgio Corp. v. Valley Labor Citizen* (1968) 260 Cal.App.2d 268, 273; *Ringler Associates Inc. v. Maryland Casualty Co.* (2000) 80 Cal.App.4th 1165, 1180.) "[R]epublication occurs when the proprietor has knowledge of the defamatory matter and` allows it to remain after a reasonable opportunity to remove it." (*Hellar v. Bianco* (1952) 111 Cal.App.2d 424, 427.) This is so, *regardless* of whether the repeating party is a third party or the defamed party itself, a case of so-called "compulsory self-publication." (*McKinney v. County of Santa Clara* (1980) 110 Cal.App.3d 787, 796-797.)

Here, not only did Griffith publish repeatedly to Voorhees, but Griffith knew that Voorhees' single goal was to find a way to halt the sale and that Voorhees would (and did) republish Griffith's statements, including the draft June 10 letter, countless times among numerous individuals, who then further republished it, including on the Save's website. (Evid., ¶ 28.) Moreover, as Griffith knew it would, the Church was compelled to disclose the title claim to its buyer. (Evid., ¶ 26.) Griffith is liable for all these republications, and yet its motion ignores them.

C. Griffith's Publications Are Not Privileged.

(1) Griffith's Slanders Are Not Protected By The Litigation Privilege: As set forth above, Griffith's June 10 letter is not protected by the litigation privilege because Griffith did not intend to litigate. (See *Edwards*, *supra*, 53 Cal.App.4th at p. 39). And had the letter been

sent as part of a "proposed proceeding contemplated in good faith and under serious consideration," the many other slanders by non-attorney Angus to third-party Voorhees are certainly not protected.

For litigation-privilege protection, a communication must be "in furtherance of the objects of the litigation." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 219.) The "communication [must] be connected with, or have some logical relation to, the action, i.e., that it not be extraneous to the action." (*Id*. at pp. 219-220.) Here the communications to Voorhees were *not* "in furtherance of the objects of the litigation." Instead, Griffith's CEO Foss testified that the June 10 letter "wasn't for" Voorhees, rather the letter was meant solely for the Church. (Evid., ¶ 34.) Foss also testified that he was "not interested in the fight between the bishop and the local church at all." (*Ibid*.) Griffith's attorney also confirmed it was "a private letter" intended only for the Church and "not other third parties" and admitted Angus' sending a draft to Voorhees "did not" promote the intended private discussion with the Church. (Ibid.)

(2) Griffith's Slanders Are *Not* Conditionally Privileged: Although Griffith did not raise this in its motion (and should not be permitted to sandbag by raising it in reply), the Church anticipates Griffith will 47, subdivision (c). Section 47 makes conditionally privileged a "publication or broadcast" made "in a communication, without malice, to a person interested therein, by one who is also interested." (Civ. Code §47, subd. (c)(1).) But this applies *narrowly* only where a "genuine common interest" exists between the communicator and the audience. (*Brown v. Kelly Broad. Co*. (1989) 48 Cal.3d 711, 729.) Griffith has the burden to establish that this privilege applies, and if it succeeds, the Church must rebut this by showing malice. (*Taus v. Loftus* (2007) 40 Cal.4th 683.) Griffith made no effort to make this showing in its motion, so it fails.

For the purposes of this conditional privilege, malice is defined as "motivated by hatred or ill will towards the plaintiff *or* by a showing that the defendant lacked reasonable grounds for belief in the truth of the [communication] and therefore acted in reckless disregard of the plaintiff's rights." (*Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316, 336.) "If malice is shown, the privilege is not merely overcome, it never arises." (*Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 740.)

Here, Griffith's slanders are not conditionally privileged for three reasons. First, as to the slanders published to third-party Voorhees, no "common interest" existed between Voorhees and Griffith. Rather the slanders were unrelated to the "private" communications between Griffith and the Church; e.g., Griffith addressed the June 10 letter to the Church, *not* to Voorhees.

Second, Griffith had no reasonable basis for making its slanderous statements. Griffith conducted an investigation that revealed that (1) the 1984 Quitclaim broadly released any remaining interest Griffith had in the Church's property, (2) lot 1199 sits in the *middle* of the Church's building, and neither it or any of the four lots Griffith deeded were ever used for parking, and (3) McGrew and Molko both confirmed that Griffith had no reason to treat lot 1199 any differently from the other lots. And Griffith further knew all of this from the Church's *June 17* letter and has had it repeatedly confirmed since; yet even today Griffith still claims it can enforce the use restriction – without a single document or witness in support.

Third, Griffith's slanders were *not* made for a legitimate purpose; instead they were made because Griffith bought into Voorhees' promises of "development opportunities" and "positive press" and because Griffith shares Voorhees' ill will toward the Bishop. Voorhees has repeatedly described the Bishop as "an intimidating bully," "vindictive," "vengeful," "a piece of work," "not good at all," and with a "greed for money." Griffith's own moving papers – in which Griffith parrots Voorhees' insults – prove Griffith harbors this same ill. (Motion, pp. 2:22, 4:20, 7:7-12.)

D. Griffith's Repeated Statements That It Never Released The Church-Use Restriction Are False.

A quitclaim deed transfers to the grantee all of the right, title, and interest that the grantor had at the time the deed was executed and delivered. (*City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 239.) This includes the release of any restrictions on the property. (*Howard Homes, Inc. v. Guttman* (1961) 190 Cal.App.2d 526, 530.) Indeed, courts broadly construe quitclaim deeds. (See *Graff v. Middleton* (1872) 43 Cal. 341, 344.) The "choice of the quitclaim deed form, with its established legal import, *substantially reflects an intention to convey title in its entirety*." (*Manhattan Beach*, *supra*, 13 Cal.4th at pp. 239, emphasis added.)

In the 1984 Quitclaim, Griffith clearly and unambiguously "remise[d], release[d] and quit-claim[ed]" its interest in Lots 1197, 1198, and 1200 of the Church's property, and also, "the Reverter interest reserved in the Corporation Grant Deed [the 1945 Deed]." (Evid., ¶ 4.) There is no carve out for the purported church-use restriction, nor is there any indication whatsoever that the parties intended that the church-use restriction remain enforceable as to *any* of the lots.

(1) The Omission Of Lot 1199 Was A Typo: Griffith claims that the omission of lot 1199 means that Griffith never released the restriction as to that lot. Nonsense. All documents, testimony, and other evidence shows that the intent of the parties was to release the church-use restriction as to the entirety of the Church's property and that lot 1199 was left off as a typo. (Evid., ¶ 8.) Not one contrary document or other piece of evidence exists. And Frank Trane, who negotiated the release of the church-use restriction, has affirmed both publicly and privately that the omission of lot 1199 was simply "a scrivener's error" (and that he paid Griffith $800,000 for the release). (Evid., ¶ 9.) Finally, common sense directs that no reason exists to restrict just lot 1199, which lies in the middle of the Church's building – as every Griffith witness acknowledged.

(2) Griffith Did Not Simply Release Its Reversion Right: Griffith's other assertion is that the 1984 Quitclaim was only intended to release the reversion right. However, the reverter right had *already expired* as a matter of law before the 1984 Quitclaim was executed. Specifically, under Civil Code section 885.030 for Griffith to have preserved the reverter right, Griffith had to record a notice of intent to preserve it no later than 1975. Griffith did not do this. Thus, Griffith's reverter automatically terminated almost a decade before the 1984 Quitclaim. Consistent with the full release of the use restriction, Griffith looked into a tax deduction related to the 1984 Quitclaim, which only makes sense if the church-use restriction was lifted and thus the property was more valuable, so there was something to write off. And, besides Frank Trane's statements that he paid $800,000 for the quitclaim (which statement are confirmed by Voorhees' report to Griffith that Trane had "funded the purchase of most of the property"), the Church's own records show the value of the Church property skyrocketing by that amount after the execution of the 1984 Quitclaim. (Evid., ¶¶ 6, 36.) Finally, the Quitclaim itself uses a capitalized "Reverter interest" – which reads naturally to encompass the *entire* restrictive clause of the 1945 Deed. If

Griffith has intended to keep part of the 1945 restriction in place, it would have done so expressly.

E. The Church's Continuing Damages Resulting From The Slanders.

Griffith's slanders have substantially damaged the Church. First, "[t]he most usual manner" in which slander of title "causes pecuniary loss is by preventing a sale to a particular purchaser . . .. (*Glass v. Gulf Oil Corp.* (1970) 12 Cal.App.3d 412, 424.) Here, Griffith has prevented the Church from selling to Legacy for $15 million. (Evid., ¶ 37.) Plus, the Church continues to incur substantial carrying costs associated with continued ownership. (*Ibid.*)

Second, Griffith is liable for the Church's attorneys' fees incurred in clearing title to the property. (*Glass*, *supra*, 12 Cal.App.3d 412, 437-439.) Those damages include attorneys' fees incurred in bringing this suit. (*Contra Costa County Title Co. v. Waloff* (1960) 184 Cal.App.2d 59, 67-68.) Here, the Church has already incurred tens of thousands of dollars prosecuting this quiet title action and in defending against the Save group's action. (Evid., ¶ 38.)

6. GRIFFITH'S REQUEST FOR FEES IS GROSSLY EXCESSIVE.

As detailed in the concurrently filed Bauer declaration (¶¶ 5-7), even had Griffith's motion been meritorious, Griffith's request for more than $51,000 in attorneys' fees is grossly excessive and unsupported (for a motion that only addresses prong one and ignores the evidence related to prong two). The Court is well within its discretion in greatly reducing any fee award.

7. CONCLUSION.

Griffith and Voorhees believe that they hatched a clever way to cloud the Church's title and prevent the sale of the Church's property while shielding themselves from the tremendous damages they have caused. But the law is not so easily manipulated. Their repeated publications are actionable. Griffith's anti-SLAPP motion lacks merit, and the Court can and should deny it.

Dated: October 21, 2015

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

By: _____
K. ERIK FRIESS
Attorneys for Plaintiff THE BISHOP OF THE PROTESTANT EPISCOPAL CHURCH IN LOS ANGELES