

When a Negative Posting As To A Contractor Is Not Subject to Privilege: Court of Appeal Affirms Denial of Anti-SLAPP Motion for Internet Blogs Criticizing Contractor

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One of the challenges facing contractors, and other professionals, are unhappy clients. Clients sometimes not only complain to the contractor, but use the internet to voice their frustrations. While complaining in public about a contractor is certainly legal, a question arises as to whether complaints, particularly on Yelp and other internet platforms, can be libel per se, and if they are libel per se, would they be protected by a litigation privilege?

Many of these questions were resolved in the recent case of Paglia & Associates Construction, Inc. v. V.J. Hamilton (2023) Westlaw 8915539 ("Paglia case").

The Paglia case is all too familiar. Safeco Insurance Company provided homeowners insurance coverage to Vanessa Hamilton for her single family residence. When a tree fell on Hamilton's house, Safeco recommended contractor Vincent T. Paglia and his company, Paglia & Associates Construction, Inc., dba Protech Construction ("Paglia"). Hamilton signed a repair contract with Paglia in 2016. Paglia expressed that the required repair was extensive because Hamilton's 1923 home was in poor condition, and current building codes required extensive reconstruction. Paglia finished its work in 2017.

Unhappy with Paglia's work, Hamilton reported Paglia to the State Contractors License Board ("Board"). Hamilton claimed that the Board in 2019 assessed \$4,750 in civil penalties against Paglia and ordered Hamilton to be paid \$20,371. Paglia's failings were numerous, according to Hamilton, including, among many other items, failure to level the front and back yards, failure to install attic fence, and failure to provide a proper driveway width.

Hamilton began posting critiques of Paglia in 2019 (after complaining to the Contractors License Board). She continued her blog and Yelp attacks through January 2021. Many of the posts, but not all, mentioned the Complaint to the Contractors License Board. There is no question that Hamilton's posts were, if not privileged, defamatory (one of the postings expressed, "Lesson Learned from Protech. Protech Is Deceptive and Threatening. Lesson #1 ... ").

Thereafter, in 2021, Paglia sued Hamilton for libel per se. Hamilton then filed a Special Motion to Strike, claiming that her posts were privileged because they arose out of Hamilton's complaints to the Contractors State License Board. The Trial Court denied

Hamilton's Motion. On appeal, the Court of Appeal affirmed the Trial Court's ruling, holding that Paglia supplied sufficient facts to defeat Hamilton's anti-SLAPP Motion. The Court of Appeal commented that the litigation privilege does not cover statements made entirely outside of the litigation context and there was a lack of nexus for there to be a litigation privilege in this case.

The Paglia case is important in that it provides authority that the mere fact that going to a Contractors License Board with a homeowner complaint, and being successful, does not necessarily provide litigation privilege for expressions about the contractor which are not directly connected to what occurred before the Contractors State License Board.

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