

Florida Court Dismisses Pastor's, Mega-Church's Defamation Suit Against Univision Under Anti-SLAPP Statute

By Lauren Russell

A Florida state court dismissed a defamation action based on statements in a series of news reports that Pastor Carlos Enrique Luna Lam accepted money from a convicted drug trafficker to fund his Guatemalan mega-church, Iglesia Cristiana Casa de Dios. This is one of the first decisions to dispose of an action pursuant to Florida's anti-SLAPP statute at the motion to dismiss stage rather than at summary judgment. [Lam v. Univision](#), (Fla. Cir. Nov. 2, 2019).

Background

Luna, who goes by "Cash," is a charismatic Guatemalan pastor who believes in the "prosperity gospel"—that his church's and his personal success are due to hard work in service of the Lord. His church, Casa de Dios, has 25,000 members and has a following throughout Latin America and Spanish-speaking communities in the United States. Despite its location in one of South America's most poverty-stricken countries, the church's Temple Fraijanes is, according to Casa de Dios, one of the largest churches in the world, featuring an auditorium that seats 11,000, "two theaters, two sports centers, landscaped pedestrian pathways, seven acres of greenspace and more than 1,500 trees." Luna has likewise prospered, and travels in private jets and lives in a mansion.

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Starting December 2018, Univision published a series of reports on the "earthly factors" contributing to Luna's financial success. The reports were the product of a months-long investigation by Univision reporters and were published as part of its program *Aqui y Ahora* and online. The reports included that Luna had accepted money from Marllory Chacón, a prominent Guatemalan cocaine trafficker known as the "Queen of the South" who was convicted in the U.S. of drug trafficking in 2015, to fund his ministry.

The Univision reports featured interviews with a Colombian pilot named Jorge Mauricio Herrera Bernal, who claimed he was part of the U.S. DEA's infiltration into Chacón's organization around 2010. Herrera told Univision that he transported cocaine for a Colombian cartel and recorded meetings he attended with Chacón in which she discussed delivering money to Luna. Another source spoke to Univision anonymously but on camera and told Univision that Chacón and Luna lived in adjacent properties in Guatemala City, and Luna "constantly asked Chacón for money." Following the publication of Univision's reports, Guatemala's Attorney General Office opened an investigation into Luna and his links to Chacón.

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The Lawsuit

In June 2019, Luna and Casa de Dios sued Univision and two reporters who worked on the story in the Eleventh Judicial Circuit of Florida, alleging that 68 statements pertaining to Luna's acceptance of money from Chacón were defamatory. Plaintiffs alleged actual malice in defendants' reliance on Herrera Bernal as a source and in publishing his account despite the plaintiffs' denial of wrongdoing. The lawsuit largely attacked Herrera Bernal's credibility by focusing on his questionable background as an admitted drug smuggler and on an unrelated criminal action against Herrera Bernal. In 2017 Herrera Bernal was charged with attempted murder and false imprisonment, and while the charges were pending he filed nine *pro se* lawsuits containing what plaintiffs referred to as "outrageous" allegations. The plaintiffs emphasized that the Herrera Bernal's lawyer and the trial judge presiding over the unrelated criminal case "questioned" his competency.

The defendants moved to dismiss the action pursuant to Florida's Anti-SLAPP Statute, Fla. Stat. § 768.295, and argued the plaintiffs failed to plead facts that would amount to actual malice. In addition to pointing out the depth of their investigation and that the news reports relied upon multiple sources, defendants emphasized that Herrera Bernal was twice held competent to stand trial in the unrelated criminal case and was ultimately acquitted of all charges. The plaintiffs responded that they had sufficiently pleaded actual malice through the articulated reasons to doubt Bernal's mental stability and reliability. The parties disagreed as to pleading standards imposed by the Anti-SLAPP statute and one of the few Florida appellate cases analyzing application of the statute at the motion to dismiss stage, *Gundel v. AV Homes, Inc.*, 264 So. 3d 304 (Fla. 2d DCA 2019).

The Opinion

The court granted defendants' motion and issued an order dismissing the case with prejudice on November 2, 2019. In its dismissal order, the court concluded that the reports at issue were "precisely the sort of speech the Anti-SLAPP statute was enacted to protect" and that the Anti-SLAPP statute—and the *Gundel v. AV Homes* opinion that "controls this Court's analysis"—placed the burden on the plaintiffs, not the defendants, to prove their claims were not without merit.

The court went on to conclude that publishing despite plaintiffs' denials of wrongdoing was not actual malice as a matter of law, and in any event, the reports included plaintiffs' denials. Regarding reliance on Herrera Bernal, the court noted (1) that he was twice adjudicated competent by two experts and the court, (2) he was ultimately acquitted in the unrelated criminal case, and (3) the *pro se* complaints and other filings "repeat his claims that, among other allegations, he was a DEA informant (which claims Plaintiffs do not dispute) and that

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Chacón gave money to Luna.” Therefore, “the totality of these records—especially the two judicial findings of competency, supported by two experts—completely undermine any determination that Defendants subjectively doubted Herrera Bernal’s story, yet published it anyway.”

Finally, the court noted that defendants’ news reports were not “single source stories” but rather were intensively researched over the course of many months and that Herrera Bernal’s accusations against plaintiffs were corroborated. The court also took judicial notice of another report by a reputable publication that Luna had received expensive gifts from Chacón, and that Luna “has a reputation for associating with powerful, but corrupt politicians” as evidence that that Herrera Bernal’s account was not so “inherently improbable” that they could not give it credence. Ultimately, the court determined that reliance on an imperfect source is not actual malice, particularly where, as here, the source’s statements are corroborated and that the plaintiffs “have not met either their burden under the Anti-SLAPP statute nor the ‘overwhelming burden under the actual malice standard.’” The court further concluded that permitting the plaintiffs to amend the complaint would be futile.

Luna and Casa de Dios have filed a notice of appeal, and the defendants have filed a motion for fees pursuant to the Anti-SLAPP statute.

Defendants are represented by Ballard Spahr attorneys Leita Walker in Minneapolis, Lauren Russell in Washington D.C., and Leslie Minora, who is now completing a Third Circuit clerkship, as well as Peter Prieto and Alissa Del Riego of Podhurst Orseck P.A. in Miami. Plaintiffs are represented by Charles Harder of Harder LLP, and Mark Raymond and Amy Steele Donner of Nelson Mullins Broad and Cassel in Miami.

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