

FILED
LOS ANGELES SUPERIOR COURT
NOV 03 2006
JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK
BY N. LEE, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
BEVERLY HILLS COURTHOUSE**

BRITNEY SPEARS, an individual,
Plaintiff,

vs.

US WEEKLY LLC, a Delaware corporation;
IAN DREW, a California resident,
Defendants.

Case No.: SC087989

**RULING AND ORDER ON DEFENDANTS'
SPECIAL MOTION TO STRIKE
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

After consideration of all the documentation submitted and arguments made the court rules as follows on Defendants' Special Motion to Strike Plaintiff's First Amended Complaint:

It is not disputed that US Weekly has made a threshold showing that Spears's libel claim arises from the magazine's protected speech. The burden then shifts to Spears to "demonstrate a probability of prevailing" on the claim. "Plaintiff 'must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of fact to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.'" *Navellier v. Sletten* (2002) 29 Cal.App.4th 82, 88. The court previously provided Spears an opportunity at her request, to conduct limited discovery on the issue of malice. However, after consideration of all the

1 arguments, the court must ultimately agree with US Weekly that the fundamental issue in this
2 motion is whether the published article is defamatory.

3 In her Opposition to this Motion, Plaintiff asserts: "This case is about Defendants'
4 reckless decision to publish blatant lies about Spears' filming of a sex video, then carelessly
5 allowing a member of her entourage to find and threaten to release a copy, and then visiting her
6 lawyer's office to assess the damage from the anticipated release of the tape." (Pl. Opp. to
7 Special Motion to Strike, 5:8-11) Defendant argues that Plaintiff used her Opposition to "rewrite
8 her libel claim" and that the FAC emphasized her "goofy" reaction to the viewing of the tape in
9 the lawyers' office. (Reply to Opposition to Motion to Strike, 2:27-3:3.) The court is prepared
10 to adopt Plaintiff's interpretation of the FAC for the purposes of this Motion. It is clear that
11 Plaintiff did not bring this lawsuit because she was falsely accused of acting goofy.

12 The issue is whether it is defamatory to state that a husband and wife taped themselves
13 engaging in consensual sex. The backdrop against which this issue must be addressed is that the
14 Plaintiff has publicly portrayed herself in a sexual way in her performances, in published
15 photographs and in a reality show, *Chaotic*. The reality show is of particular note because in it,
16 Plaintiff plainly discusses her active sex life with her then-boyfriend, Kevin Federline. The
17 purpose of the reality show was to film Plaintiff in unscripted intimate moments during a tour,
18 and it achieved its purpose by televising Plaintiff filming Federline naked in the shower, Plaintiff
19 interviewing Federline during a night-time bus ride while Plaintiff was naked, and otherwise
20 catching Plaintiff talking uninhibitedly about her sex life.

21 The standard for defamatory statements is constantly changing. Plaintiff's reality show,
22 for example, which profiled an unmarried woman having sex would have been actionable 50
23 years ago. But as stated in *Freedlander v. Edens Broad* (E.D. Va. 1990)734 F.Supp 221, 227,
24 "cohabitation, in the context of today's social mores, cannot be said to be behavior involving
25 moral depravity or deviation." As camcorders have become more readily available to the

1 general population, the issue of "sex tapes" has hit the legal arena. Intimate acts which
2 previously were kept behind closed doors are now easily documented for posterity.

3 Applying any legal standard propounded by the Plaintiff, is it "sexually deviant,"¹
4 "immoral sexual conduct,"² "lustful and sexually promiscuous,"³ pornographic,⁴ "extremely
5 promiscuous,"⁵ or "serious misconduct"⁶ for any married couple to tape themselves having sex,
6 for their own personal use, in this day and age? Arguably not. Add to the equation that the
7 Plaintiff herself has put her modern sexuality squarely, and profitably, before the public eye, and
8 the answer must be no.

9 If a "word" is "the skin of a living thought and may vary greatly in color and content
10 according to the circumstance and the time in which it is used,"⁷ then the same may be said of
11 what is depicted through the camera lens, and when it is depicted. In the Dick Van Dyke show a
12 married couple slept in different beds, but in Sex and the City the single women slept in many
13 different beds. Given contemporary standards of defamation, which evolve over time, the court
14 cannot find that the statements made in the US Weekly article about this Plaintiff are defamatory
15 as a matter of law, and she therefore cannot prevail on her claim.

16 IT IS HEREBY ORDERED that the Motion be granted and Plaintiff's complaint be
17 stricken.

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19 DATED: November 3, 2006

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21 _____
22 Judge of the Superior Court

23 ¹ Menefee V. Codman (1958) 155 Cal.App.2d 396

24 ² Ervin v. Record Pub. Co. (1908) 154 Cal. 79

25 ³ Rejent v. Liberation Publ.Inc. (1994) 197 A.,D.2d 240

⁴ Michaels v. Internet Entertainment Group (1998) F.Supp.2d 823, 840

⁵ Ward V. Klein (N.Y. Sup. Ct. 2005) 809 N.Y.S.2d 828

⁶ Restatement (Second) of Torts §574

⁷ Towne v. Eisner (1918) 245 U.S. 418, 425