

Mitchell v. Twin Galaxies (2021) DJDAR 10691

Donkey Kong record holder provided sufficient evidence in his defamation claim to survive anti-SLAPP motion.

FACTS: Self-styled GOAT of gaming Billy Mitchell sued Twin Galaxies, LLC for defamation and false light after the organization published a statement disputing the legitimacy of “world record” high scores supposedly set by Mitchell in the arcade version of Donkey Kong. In 1982, Walter Day founded Twin Galaxies in partnership with the International Video Game Hall of Fame and Guinness World Records to organize competitive video game tournaments and adjudicate video game-related world records. In 2014, Day sold the organization to game-industry veteran Jace Hall, who evolved the organization into online platform where “competitive video game rules are set, player performances are measured, and records may be viewed or challenged.”

Sometime after Hall’s purchase of Twin Galaxies, a user of the platform disputed gameplays of Mitchell’s world record Donkey Kong gameplay, accusing Mitchell of having achieved the scores on an emulation platform rather than the arcade console hardware. The accuser claimed that video tapes showed images and anomalies that could not be produced on the original arcade hardware. Twin Galaxies investigated and published a statement through social media that it no longer recognized Mitchell’s Donkey Kong world record. It took the further action of removing all other scores set by Mitchell from the website and banning Mitchell from the platform entirely.

PROCEDURAL POSTURE: Mitchell filed suit against Twin Galaxies for defamation and false light. Twin Galaxies countered with an anti-SLAPP motion, contending, in part, that Mitchell could not establish a probability of success in his defamation claim. To oppose the video tapes, Mitchell submitted declarations from several referees, engineers and hardware owners who attended the events where Mitchell’s high scores were set and attested to the hardware used for Mitchell’s record scores. The trial court denied the anti-SLAPP motion and Twin Galaxies appealed.

HOLDING: Affirmed. Despite many unresolved factual disputes at issue remaining in the case, the Second District Court of Appeals denied Twin Galaxies’ anti-SLAPP motion because Mitchell demonstrated the “requisite minimal merit” to his claims.

DISCUSSION: False light defamation suits are based on publicity that paints an untrue picture of a public figure and the defendant knew or at least acted recklessly as to the falsity of the publicized matter and the false picture plaintiff would be placed in. To survive an anti-SLAPP motion, a plaintiff must show a probability of prevailing on the merits. In evaluating such, a court should consider the evidence submitted by both parties but should not weigh the credibility or comparative probative strength of the evidence at this stage.

Here, the declarations submitted by Mitchell provide substantial evidence that the hardware used was genuine. Although the video tapes that Twin Galaxies relied upon conflicted with the declarations, the court held that deferring to the tapes would require weighing the credibility of the evidence. Accordingly, the court declined to compare the probative strength of the declarations and the video tapes, and instead held that the trial court properly denied Twin Galaxies’ anti-SLAPP motion because its evidence failed to defeat Mitchell’s prima facie evidence in support of his claims as a matter of law.