SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
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DEBRA MULÉ and SCOTT DAVIS,

Plaintiffs,

– against –

COUNTY OF NASSAU, BRUCE BLAKEMAN, in his official capacity as Nassau County Executive, and ANTHONY J. LaROCCO, in his capacity as Nassau County Sheriff,

Defendants.
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Index No. 602642/2025

Hon. GARY M. CARLTON
IAS/Trial Part 26

DECISION AND ORDER

Motion Seq. 004

The following papers were read on this motion:

Notice of Motion/Affirmation/Memo of Law/Supporting Exhibits..... X
Affirmation in Opposition/Memo of Law/Supporting Exhibits..... X
Reply/Memo of Law/Supporting Exhibits X

Upon the foregoing papers, defendants County of Nassau ("the County"), Bruce Blakeman, in his official capacity as Nassau County Executive ("Blakeman"), and Anthony J. LaRocco, in his capacity as Nassau County Sheriff ("LaRocco"), (collectively "defendants") move for an order, pursuant to CPLR 3211 (a) (7) and (g), dismissing the amended complaint. Plaintiffs Debra Mulé and Scott Davis (collectively "plaintiffs") oppose the motion. For the reasons set forth herein, the motion is denied.

BACKGROUND

On March 17, 2024, Blakeman, in coordination with LaRocco, announced the creation of a "Provisional Emergency Special Deputy Sheriff" program ("the program"). The press release, which was published in the classified advertisement section of Newsday, invited individuals who met certain minimum criteria, including United States citizenship, residence in Nassau County, and possession of a pistol license, to apply to serve as provisional emergency special deputies. The program requires recruits to complete basic training at the Nassau County Police Academy and provides for payment of a $150 stipend for each day of activation. The program is allegedly taxpayer funded.

On February 4, 2025, plaintiffs, both members of the Nassau County Legislature, commenced this action pursuant to General Municipal Law § 51 and CPLR 3001 ("*Mulé I*"), challenging the program as unlawful and a waste of public funds. They alleged that the action was brought in their capacity as taxpayers and sought injunctive and declaratory relief. The complaint also asserted a cause of action under CPLR article 78 regarding defendants' alleged failure to respond to a FOIL request related to the program.

Defendants subsequently interposed an answer denying the material allegations of the complaint and asserting various affirmative defenses, including that they had lawful authority

under the pertinent statutes to implement the program as an emergency response measure. The answer also contained a counterclaim under Civil Rights Law § 70-a, alleging that *Mulé I* is a strategic lawsuit against public participation ("SLAPP"). According to defendants, plaintiffs commenced the action to retaliate against them for public advocacy supporting the program and to advance partisan political objectives. The counterclaim sought attorneys' fees, costs, and damages.

On May 9, 2025, plaintiffs served an amended complaint, removing the FOIL cause of action but leaving the remaining allegations unchanged. On the same date, plaintiffs commenced a separate action against defendants and against Blakeman and LaRocco in their individual capacities (Sup Ct, Nassau County, index No. 609900/25) ("*Mulé II*"). In that action, plaintiffs assert claims under the anti-SLAPP law and 42 USC § 1983, contending that defendants' counterclaim is itself a SLAPP suit that violates their constitutional rights. On June 27, 2025, defendants served an answer to the amended complaint in *Mulé I*, reasserting their anti-SLAPP counterclaim and incorporating allegations relating to *Mulé II*.

Thereafter, defendants filed the instant motion, arguing that *Mulé I* must be dismissed pursuant to the anti-SLAPP law because it is an "action involving public petition and participation" within the meaning of Civil Rights Law § 76-a (1) (a) and lacks a substantial basis in law. They also argue that dismissal is warranted on the basis that plaintiffs failed to comply with the bond requirement of General Municipal Law § 51 and due to lack of standing.

DISCUSSION

Anti-SLAPP Law

The anti-SLAPP law protects against retaliatory litigation arising from protected speech or petitioning activity by deterring strategic lawsuits against public participation, commonly known as SLAPP suits (*see VIP Pet Grooming Studio, Inc. v Sproule*, 224 AD3d 78, 80 [2d Dept 2024]; *Southampton Day Camp Realty, LLC v Gormon*, 118 AD3d 976, 977 [2d Dept 2014]). "SLAPP suits … are characterized as having little legal merit but are filed nonetheless to burden opponents with legal defense costs and the threat of liability and to discourage those who might wish to speak out in the future" (*Aristocrat Plastic Surgery P.C. v Silva*, 206 AD3d 26, 28 [1st Dept 2022]).

Civil Rights Law § 70-a (1) provides that "[a] defendant in an action involving public petition and participation … may maintain an action … or counterclaim to recover damages, including costs and attorney's fees, from any person who commenced or continued such action." Under the amended version of the statute applicable to this case, an "action involving public petition and participation" is defined, as relevant here, as a claim that is based upon "any communication in a place open to the public or a public forum in connection with an issue of public interest; or (2) any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public interest" (Civil Rights Law § 76-a [1] [a] [1],

[2]). A "communication" includes "any statement, claim, allegation in a proceeding, decision, protest, writing, argument, contention or other expression" (*id.* § 76-a [1] [c]).[1]

On a defendant's motion pursuant to CPLR 3211 (a) (7) and (g), the defendant must first demonstrate that the action qualifies as an action involving public petition and participation within the meaning of the statute (*see Mable Assets, LLC v Rachmanov,* 192 AD3d 998, 1000 [2d Dept 2021]). If that showing is made, the burden shifts to the plaintiff to demonstrate that the causes of action alleged in the complaint have a "substantial basis in law" (CPLR 3211 [g]; *see Moonbeam Gateway Mar., LLC v Tai Chan*, 239 AD3d 965, 966 [2d Dept 2025]; *Mable Assets, LLC v Rachmanov,* 192 AD3d at 1000).

Here, defendants argue that *Mulé I* qualifies as an action involving public petition and participation because the amended complaint is "based upon" communications made in a public forum and other conduct in furtherance of their right to free speech, specifically Blakeman's public statements and advocacy in support of the program. In opposition, plaintiffs argue, among other things, that *Mulé I* does not involve public petition and participation because it challenges the legality of a government program, not defendants' speech or communications. They also contend that their claim has a substantial basis and that the anti-SLAPP law does not protect governmental entities or public officials.

To determine whether defendants have met their initial burden, the Court must decide whether plaintiffs' claim is "based upon" the announcement and public statements (Civil Rights Law § 76-a [1] [a]). This issue has not been the subject of extended analysis by New York appellate courts and has only been touched upon briefly (*see e.g. Black v Ganieva*, 236 AD3d 427, 427 [1st Dept 2025] [holding that a claim "rooted in" allegations concerning defendants' commencement and prosecution of a legal action fell within the statute]). Because neither the statute nor New York appellate authority provides definitive guidance, the Court looks to California law, which has long interpreted a comparable anti-SLAPP statute (*see Nelson v Ardrey*, 231 AD3d 179, 184 [2d Dept 2024]; *Aristocrat Plastic Surgery P.C. v Silva*, 206 AD3d at 31).

The Supreme Court of California has explained that "courts are to consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability" (*Bonni v St. Joseph Health Sys.*, 11 Cal 5th 995, 1009, 491 P3d 1058, 1065 [2021] [internal quotation marks omitted]). Allegations that are merely incidental or provide context without supporting a claim for recovery do not suffice (*see Bonni v St. Joseph Health Sys.*, 11 Cal 5th at 1012, 491 P3d at 1068). "[A] claim is not subject to [an anti-SLAPP law] simply because it contests an action or decision that was arrived at following speech or petitioning activity, or that was thereafter communicated by means of speech or petitioning activity. Rather, a claim [is subject to an anti-SLAPP law] only if the speech or petitioning activity *itself* is the wrong complained of" (*Park v Bd. of Trustees of California State Univ.*, 2 Cal 5th 1057, 1060, 393 P3d 905, 907 [2017] [emphasis in original]; *see Wilson v Cable News Network, Inc.*, 7 Cal 5th 871, 884, 444 P3d 706, 713 [2019]).

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[1] The Court does not address the public interest requirement because it is undisputed that this action concerns a matter of public interest, which is broadly construed to cover "matters of political, social, or other concern to the community" (*Aristocrat Plastic Surgery P.C. v Silva*, 206 AD3d at 29; *see* Civil Rights Law § 76-a [1] [d]).

The cause of action asserted in *Mulé I* is premised on General Municipal Law § 51, which authorizes taxpayers to maintain an action against municipalities and municipal officers to prevent waste, fraud, collusion, or other illegal acts (*see Godfrey v Spano*, 13 NY3d 358, 373 [2009]). To state a claim under this statute, a plaintiff taxpayer is required to allege that "the challenged act constituted a waste of or injury to public funds or, alternatively, that the challenged act was both illegal and 'imperil[ed] the public interests or [was] calculated to work public injury or produce some public mischief' " (*Long Is. Pine Barrens Socy., Inc. v County of Suffolk*, 122 AD3d 688, 690 [2d Dept 2014], quoting *Matter of Korn v Gulotta*, 72 NY2d 363, 372 [1988]). Unlike a proceeding brought pursuant to CPLR article 78 (which provides relief to parties personally aggrieved or prejudiced by government conduct), an action under General Municipal Law § 51 permits an individual, based on their status as a taxpayer, to challenge the wrongful expenditure of public funds (*see Matter of Glass v County of Suffolk*, 130 AD3d 726, 727-728 [2d Dept 2015]).

In the amended complaint, plaintiffs allege that County Law § 655, cited as the statutory basis for the program, does not authorize defendants to deputize private citizens with police powers or to establish an emergency special deputy program in the absence of a declared emergency. The amended complaint further asserts that defendants lack authority to compensate special deputies the announced stipend of $150 per day without legislative approval. Plaintiffs claim that defendants have already expended public funds on the program, that the program has been operated in a secretive manner, and that it endangers public safety. The wherefore clause of the amended complaint seeks declaratory relief that the program represents a waste of public funds and an injunction enjoining the use of public funds and resources in connection with the program.

The only references to defendants' communications or speech appear in the "Preliminary Statement" and "Facts" sections of the amended complaint, where plaintiffs recount Blakeman's announcement of the program and public statements made in response to inquiries from Newsday and at a subsequent press conference. Those statements pertained to the number of individuals enrolled in the program, defendants' plans to recruit additional members, and the circumstances under which such members might be deployed.

Considering the foregoing, the Court finds that defendants failed to demonstrate that *Mulé I* qualifies as an action involving public petition and participation under the anti-SLAPP law. Even assuming that municipalities and public officials may invoke the protections of the statute, *Mulé I* does not seek to impose liability based on defendants' speech or communications. The alleged wrongful conduct at issue is the expenditure of funds to create and operate the program, not the speech surrounding its announcement or subsequent public statements. The references to those statements are incidental, providing context or potential evidence of liability, but they do not supply the elements of the taxpayer claim. Moreover, their inclusion in the amended complaint was justified by the lack of published information regarding the program, an absence noted in the pleading. The alleged partisan motives underlying this lawsuit do not alter the statutory analysis.

In light of the determination that defendants failed to satisfy their initial burden on the motion, the Court need not reach the parties' remaining arguments, including those regarding whether plaintiffs' claim has a substantial basis.

Bond Requirement

General Municipal Law § 51 requires a plaintiff commencing a taxpayer action to furnish a bond conditioned to pay all costs that may be awarded to the defendant if the action is unsuccessful (*see Zinder v Board of Assessors of County of Nassau*, 38 AD2d 836, 836 [2d Dept 1972]; 103 NY Jur 2d Taxpayers' Actions § 61 [May 2025 Update]). The statute further provides that the bond is "to be executed by any two of the plaintiffs, if there be more than one party plaintiff" (General Municipal Law § 51). By short form order dated July 25, 2025, the Court fixed the amount of the bond at $500.

Defendants argue that the action should be dismissed based upon defects in the bond, including that it was not executed by the plaintiffs and that the obligee is incorrectly identified as "Supreme Court of the State of New York." They also contend that each plaintiff was required to post a separate $500 bond. Although the initial bond was defective in that it was missing the signature of plaintiffs and incorrectly identified the obligee, the amended bond remedies these defects (NYSCEF Doc No. 128).[2] The Court's prior order and the statute do not require that both plaintiffs separately post their own bonds of $500 each but rather that they both execute the furnished bond. The remaining objections to the bond are without merit and do not warrant dismissal. In any event, "[t]he failure to post a bond [under the statute] is not fatal inasmuch as this statutory requirement is curable nunc pro tunc" (*Vinnie Montes Waste Sys. v Town of Oyster Bay*, 150 Misc 2d 109, 113 [Sup Ct, Nassau County 1991]; *see Matter of Resnick v Town of Canaan*, 38 AD3d 949, 952 [3d Dept 2007]).

Plaintiffs have provided the requisite affidavits of justification (NYSCEF Doc No. 87).

Standing

Although defendants did not expressly seek dismissal based on lack of standing pursuant to CPLR 3211 (a) (3) in their notice of motion, they raised the issue in their supporting memorandum of law, and plaintiffs substantively addressed the arguments in opposition. Accordingly, the Court will address standing.

Defendants argue that plaintiffs lack standing because they are, in substance, suing in their capacity as legislators rather than as disinterested taxpayers as alleged. They contend that plaintiffs must demonstrate legislative standing, which requires an injury in fact. Plaintiffs respond that they have properly pleaded standing under General Municipal Law § 51 by satisfying the statute's tax assessment and payment requirements. They further maintain that the injury-in-fact standard cited by defendants is inapplicable and that this action was brought solely in their capacity as taxpayers, not legislators.

"Where a defendant seeks dismissal pursuant to CPLR 3211 (a) (3) based on lack of standing, 'the burden is on the moving defendant to establish, prima facie, the plaintiff's lack of standing' " (*Golden Jubilee Realty, LLC v Castro*, 196 AD3d 680, 682 [2d Dept 2021], quoting *BAC Home Loans Servicing, LP v Rychik*, 161 AD3d 924, 925 [2d Dept 2015]; *see Johnson v 275*

[2] Although plaintiffs have provided an amended bond to defendants, it appears that this bond has not been filed with (or was rejected by) the County Clerk. The amended bond must be filed with the County Clerk in the same manner as the original.

Clermont, LLC, 235 AD3d 731, 733 [2d Dept 2025]). General Municipal Law § 51 states that an action under the statute "may be maintained … by any person … whose assessment, or by any number of persons … , jointly, the sum of whose assessments shall amount to one thousand dollars, and who shall be liable to pay taxes on such assessment in the county, town, village or municipal corporation."

Here, defendants failed to establish their entitlement to dismissal of the complaint based on lack of standing. Plaintiffs have sufficiently alleged that they are taxpayers as defined in the statute. General Municipal Law § 51 broadly authorizes "any person" who satisfies the statutory assessment and tax payment requirements to maintain an action, language that plainly encompasses individuals who also serve as legislators. Contrary to defendants' contention, plaintiffs are not required to allege injury-in-fact standing for a cause of action premised on General Municipal Law § 51 (*see Matter of Glass v County of Suffolk*, 130 AD3d at 728; *Spadanuta v Incorporated Vil. of Rockville Centre*, 20 AD2d 799, 800 [2d Dept 1964], *affd* 15 NY2d 755 [1965]). Their motivations in commencing this action are irrelevant to standing (*see Weimer v Board of Educ. of Smithtown Cent. School Dist. No. 1,* 52 NY2d 148, 153-154 [1981]; 103 NY Jur 2d Taxpayers' Actions § 24 [May 2025 Update] ["The motives of a plaintiff in bringing a taxpayer's action are of no consequence; the fact that the plaintiff has a personal or special interest in the action, or is induced to sue by some private grievance, does not affect the taxpayer's right to maintain the action."]).

Accordingly, it is

ORDERED that defendants' motion is denied; and it is further

ORDERED that, within 30 days of the date of entry of this order, plaintiffs shall file the amended bond with the County Clerk; and it is further

ORDERED that, within 10 days of the date of entry of this order, plaintiffs shall serve a copy of this order with notice of entry on defendants.

This constitutes the Decision and Order of the Court.

Dated: October 7, 2025
Mineola, N.Y.

Hon. Gary M. Carlton, J.S.C.