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Via Hand Delivery

Chief Justice Ralph D. Gants and Associate Justices
Supreme Judicial Court for the Commonwealth
John Adams Courthouse
One Pemberton Square, Suite 1400
Boston, MA 02108

**Re: Blanchard, et al. v. Steward Carney Hospital, Inc., et al.
SJC No. 12141
(Pyle Letter Submitted on Petition for Rehearing)**

Dear Chief Justice Gants and Associate Justices of the Court:

This office represents Lynne Blanchard and the other plaintiff nurses (the “nurses”) in the above-referenced matter.

We write in response to the letter from Attorney Jeffrey J. Pyle of the firm Prince Lobel Tye LLP (the “Pyle letter”) filed in the above matter on June 7, 2017. The Pyle letter purports to support the defendants’ Petition for Rehearing in Blanchard, et al. v. Steward Carney Hospital, Inc., et al., filed pursuant to M.R.A.P. 27 on June 6, 2017.

First, Rule 27 contains no provision for such a letter. As a procedural matter, the Pyle letter is impermissible and should not be considered.

Nor does the Pyle letter raise any issues worthy of the Court’s attention. The letter incorrectly invokes First Amendment interests of the press and a class of “petitioners,” characterizing the Blanchard standard as improperly privileging a party’s self-serving declaration of its subjective motive for suing. According to the Pyle letter, such self-serving declarations will now defeat anti-SLAPP motions; courts will routinely and unavoidably become mired in

early discovery into plaintiffs' subjective "intent" and "state-of-mind"; and free speech on matters of public concern by citizens "most in need of protection," such as low-income tenants and consumers, will be chilled.

But nothing in Blanchard warrants the Pyle letter's premise: that the new standard relies on the nonmoving party's subjective intent. On the contrary, the Court gave the following guidance to motion judges:

In applying this standard, the motion judge, in the exercise of sound discretion, is to assess the totality of the circumstances pertinent to the nonmoving party's asserted purpose in bringing its claim. The cause and manner of proceedings, the pleadings filed, and affidavits "stating the facts upon which the liability or defense is based" . . . may all be considered in evaluating whether the claim is a SLAPP suit. [citation omitted]. Blanchard, slip op. at 33-34 (emphasis supplied).

In other words, the lower courts are to look at the surrounding circumstances: the facts set out in the complaint; the timing of the complaint; the nature of the proceedings; and the basis for asserted liability. It is these objective markers that are deemed to illuminate the party's purpose, rather than subjective or self-serving statements.

The Court continued:

A necessary but not sufficient factor in this analysis will be whether the nonmoving party's claim at issue is "colorable or . . . worthy of being presented to and considered by the court," [citation omitted], i.e., whether it "offers some reasonable possibility" of a decision in the party's favor Blanchard, slip op. at 34.

In other words, a nonmoving party must show, and a court determine, whether there is a reasonable basis in law for the outcome sought. This is hardly a subjective standard.

Finally, the Court made clear that a court should not parse a nonmoving party's claim and improperly focus on the portions that bear on petitioning. Rather, the motion judge must evaluate the nonmoving party's "primary motivating goal in bringing its claim, viewed in its entirety." Slip op. at 33. As the Court explained,

at this stage the motion judge is to assess in a holistic fashion whether the claim at issue is a "SLAPP" suit, [and therefore] the

nonmoving party's showing in this regard is as to the entirety of its claim. Blanchard, slip op. at 33, n.25.¹

Here, for example, the nurses can point to a host of objective facts bearing on their motivation and demonstrating no objective or subjective intent to chill Steward's petitioning: their active cooperation with defendants' "petitioning" in assisting the Harshbarger investigation; the absence of any communication to the licensing agencies critical of Carney Hospital by any of the nurses or their union; the nurses' union grievances seeking reinstatement to the unit under review by the licensing agencies, a remedy that would have been foreclosed had Steward's petitioning failed; their waiting nearly two years after the petition had succeeded to bring their suit; Mr. Walczak's defamatory comments in the email to hospital employees; and the magnitude and nature of the economic and personal losses for which their suit seeks compensation: job loss, prolonged unemployment, loss of homes, and emotional suffering. None of these are subjective. All are objective facts from which a court can draw a conclusion as to whether the nurses' "primary motivating goal" was to "interfere with and burden defendants' petitioning rights."

Nonmoving parties in similar cases will likewise be called upon to rely on objective facts to show the absence of a SLAPP suit. They could be required, for example, to show that they acted either neutrally or supportively toward the moving party's petition; that they timed their legal action so as to not to affect the petition; that they suffered actual losses; that they brought cognizable legal claims to address those losses; etc. Contrary to the alarmist predictions in the Pyle letter, the additional discovery to make such a showing in a typical SLAPP case would be nonexistent or minimal.² And any such incremental additional burden generated as a byproduct of the Court's new standard would be well worth it in the interest of restoring much-needed balance to the courts' consideration of SLAPP motions where parties' rights to petition compete.

The parties whose interests the Pyle letter purports to protect will continue to enjoy the protections of Duracraft. But it will be the rare real estate developer or slumlord who will be able to use Blanchard to salvage a genuine SLAPP suit brought against citizen petitioners. Such parties will be unable to show a disinterested stance vis-à-vis the subject matter of the petition. They will typically be unable to point to bases for their losses not connected to legitimate petitioning. They will typically have sued in reaction, and close in time, to the citizen petition. And in such cases, they will have a difficult time establishing that their realistic goal is recovery of their claimed damages from the petitioners. These sorts of objective circumstances will aid

¹ Thus, in explicating how this principle applies to the nurses' case, the Court stated explicitly that in analyzing whether the nurses' primary goal was to chill petitioning, the trial court should consider all the bases of the nurses' defamation claim, including both Mr. Walczak's (non-petitioning) email to hospital employees and his remarks in the Globe. Again, these are not subjective factors.

² For example, in this case, the nurses were already required to analyze and respond to considerable factual material, including several lengthy affidavits and numerous exhibits submitted in support of the hospital's SLAPP motion.

courts in holistically assessing motivation, quite apart from any self-serving statements by the nonmoving parties.

Finally, Blanchard does not address freedom of the press at all. The Globe is not a party. The two sides are a large corporate entity on the one hand and a group of its fired employees defamed by their employer on the other.³

Accordingly, the nurses urge the Court to set aside the improperly filed Pyle letter. If the Court considers the Pyle letter, it should reject its characterization of the Court's decision and its rationale for rehearing flowing from that mischaracterization.

The plaintiff nurses will of course await the Court's decision whether to invite a response to Steward's Petition itself.

Very truly yours,



Dahlia C. Rudavsky



Ellen J. Messing

EJM/DCR:th

cc: Jeffrey Dretler, Esq.
Jeffrey J. Pyle, Esq. ✓

³ Both petitioned the government: Steward petitioned state agencies to keep its adolescent psych unit open and published related comments in a Globe interview; the nurses petitioned the Superior Court to restore their reputations and ability to work years after Mr. Walczak's damaging Globe remarks, and like remarks in a private email to hospital employees.