

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.: 1984-CV-03333-BLS1

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

EXXON MOBIL CORPORATION,

Defendant.

Service Via E-Mail

**SPECIAL MOTION OF DEFENDANT EXXON MOBIL CORPORATION
TO DISMISS THE AMENDED COMPLAINT PURSUANT TO G.L. c. 231, § 59H**

Pursuant to G.L. c. 231, § 59H, the Massachusetts anti-SLAPP statute, Defendant Exxon Mobil Corporation (“ExxonMobil”) moves to dismiss, with prejudice, all causes of action asserted in the Amended Complaint. As grounds for this motion, ExxonMobil states:

1. On June 5, 2020, the Commonwealth of Massachusetts, acting by and through the Office of the Attorney General (“the Attorney General”), served the Amended Complaint on ExxonMobil. The Amended Complaint purports to bring three causes of action pursuant to G.L. c. 93A, and claims investor and consumer deception arising out of ExxonMobil’s public speech and engagement on climate policy.

2. Pursuant to G.L. c. 231, § 59H, a defendant may file a special motion to dismiss where claims asserted against it “are based on [the defendant’s] exercise of its right of petition under the constitution of the United States or of the commonwealth.” G.L. c. 231, § 59H. “The court shall grant such special motion, unless the party against whom such special motion is made

shows that: (1) the moving party’s exercise of its right to petition was devoid of any reasonable factual support or any arguable basis in law and (2) the moving party’s acts caused actual injury to the responding party.” *Id.*

3. The Amended Complaint should be dismissed pursuant to G.L. c. 231, § 59H because each of the three causes of action asserted are expressly premised on ExxonMobil’s protected petitioning activity and lack any other substantial basis.

4. The Amended Complaint expressly targets quintessential petitioning activity by ExxonMobil including ExxonMobil’s statements to regulators, policymakers, public officials, the press, and the public on climate policy. According to the Amended Complaint, the Attorney General objects to these activities precisely because they purportedly influenced climate policy in a manner that is contrary to the policy objectives of the Attorney General. The Commonwealth provides no basis for its claims—substantial or otherwise—apart from ExxonMobil’s protected participation in public discourse on climate policy.

5. The Attorney General will not be able to satisfy its burden of demonstrating that (1) ExxonMobil’s “petitioning activity was a ‘sham’ and that the [Attorney General] . . . has been injured as a result,” or (2) that the Attorney General’s “claims are not SLAPP suits at all, i.e., they are both colorable and nonretaliatory,” and brought ““not to interfere with and burden [ExxonMobil’s] petition rights, but to seek damages for the personal harm to [the nonmoving party] from [the] defendant’s alleged” violations of Chapter 93A. *477 Harrison Ave., LLC v. JACE Boston, LLC*, 483 Mass. 514, 516 (2019) (alterations omitted) (quoting *Blanchard v. Steward Carney Hospital, Inc.*, 477 Mass. 141, 160 (2017)).

6. Given the significance of the issues, which implicate ExxonMobil’s exercise of its right to petition as guaranteed by the First Amendment of the U.S. Constitution and Article XIX

of the Declaration of Rights of the Constitution of the Commonwealth of Massachusetts, ExxonMobil respectfully requests that the Court hold a hearing on the special motion to dismiss. A hearing would be appropriate because the issues raised are a matter of public concern. A hearing would also be conducive to consideration of the evidence submitted in support of the motion in accordance with the “burden-shifting framework” outlined by the Massachusetts Supreme Judicial Court. *See 477 Harrison Ave., LLC v. JACE Boston, LLC*, 483 Mass. 514, 516 (2019).

7. In support of this Special Motion to Dismiss, ExxonMobil relies upon the accompanying (i) Memorandum of Exxon Mobil Corporation in Support of Its Special Motion to Dismiss the Amended Complaint pursuant to G.L. c. 231, § 59h, and (ii) Affidavit of Justin Anderson and accompanying exhibits.

WHEREFORE, ExxonMobil respectfully requests that the Court allow its special motion to dismiss pursuant to G.L. c. 231, § 59H, and enter an order dismissing all causes of action alleged in the Amended Complaint with prejudice.

Dated: July 30, 2020

Respectfully submitted,

EXXON MOBIL CORPORATION

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CERTIFICATION UNDER SUPERIOR COURT RULE 9C

In accordance with Superior Court Rule 9C, counsel for defendant Exxon Mobil Corporation (Patrick J. Conlon, Justin Anderson, and Thomas C. Frongillo) and counsel for the Office of the Massachusetts Attorney General (Richard A. Johnston and James A. Sweeney) conducted a telephonic conference on Wednesday, July 29, 2020, at 12:30 p.m., and made a good faith effort to narrow areas of disagreement regarding the special motion but were unable to do so.

CERTIFICATE OF SERVICE

I, Thomas C. Frongillo, counsel for Defendant Exxon Mobil Corporation, hereby certify that on July 30, 2020, I served a copy of the Special Motion of Defendant Exxon Mobil Corporation to Dismiss the Amended Complaint Pursuant to G.L. c. 231, § 59H on counsel of record by electronic service in accordance with the Joint Motion to Set Pleading Deadlines, allowed by the Court on April 14, 2020.


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