

MULRY, JR. v LAKESIDE VENTURES, LLC, ET AL.

23CV47109

**CROSS-DEFENDANT MULRY, JR.'S DEMURRER TO
COUNTER COMPLAINT**

This action is one of a number of matters arising from disputes concerning ownership and management of Beach Lake Village mobile home park in Mokelumne Hill. Plaintiff/cross-defendant has demurred to the cross-complaint.

All matters noticed for the Law & Motion calendar shall include the following language in the notice:

3.3.7 Tentative Rulings (Repealed Eff. 7/1/06; As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence is limited pursuant to Local Rule 3.3. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

Pursuant to Local Rule 3.3.7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court. [Emphasis in original.]

Failure to include this language in the notice may be a basis for the Court to deny the motion.

Based on the foregoing, the motion is **DENIED** without prejudice to renew the motion complying with Rule 3.3.7, if otherwise timely under the law of demurrers. The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal Order is required.

J E LEY EARTHMOVING, LLC v VOORHEES, et al.

22CV45801

PLAINTIFF'S SPECIAL MOTION TO STRIKE CLAIMS OF FIRST AMENDED CROSS-COMPLAINT

Before the Court in this breach of contract complaint/substandard work cross-complaint case is a special motion to strike filed by Plaintiff/Cross-Defendant J E Ley Earthmoving, LLC ("Ley") on the grounds that certain allegations in the first amended cross complaint (FACC) are barred by California's anti-SLAPP statute, codified in Code of Civil Procedure (CCP) section 425.16.

Plaintiff's Request for Judicial Notice is **GRANTED**.

Procedural History

On March 11, 2024, Defendants filed their First Amended Cross Complaint ("FACC"), alleging causes of action for: 1) Breach of Written Subcontract, 2) Negligence, 3) Restitution to Disgorge Unjust Enrichment, 4) Common Count, 5) Reformation, and 6) Declaratory Relief. In the FACC, Defendants also brought new allegations related to the defectiveness of the mechanic's lien and the claimed damages said lien had caused them.

In its initial motion to strike, Ley sought to strike all references to the mechanic's lien and lis pendens. However, on Reply Ley contends that the Sixth Cause of Action for Declaratory Relief is "superfluous, as the validity of the liens will be determined as part of Ley's foreclosure action." (Reply p. 7.) Accordingly, Ley withdrew the request to strike the Sixth Cause of Action (Paragraphs 61-66) of the FACC.

Legal Standard

"The anti-SLAPP procedures are designed to shield a defendant's constitutionally protected conduct from the undue burden of frivolous litigation." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 393.) "The anti-SLAPP statute does not insulate defendants from any liability for claims arising from the protected rights of petition or speech. It only provides a procedure for weeding out, at an early stage, meritless claims arising from protected activity." (*Id.* at 384.)

Anti-SLAPP motions are evaluated through a two-step process. Initially, the moving defendant bears the burden of establishing that the challenged allegations or claims arise from protected activity in which the defendant has engaged. If the defendant carries its burden, the plaintiff must then demonstrate its claims have at least minimal merit. (Code Civ. Proc., § 425.16; *Park v. Bd. of Trustees of California State Univ.* (2017) 2 Cal. 5th 1057, 1061.) “Only a cause of action that satisfies both prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning and lacks even minimal merit—is a SLAPP, subject to being stricken under the statute.” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.)

The party opposing the special motion to strike must proffer a prima facie showing of facts supporting a judgment in his favor. (*Navellier v. Sletten*, (2002) 29 Cal.4th 82, 89.) In making its determination, “the court does not weigh the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim. [Citation.] In making this assessment it is the court's responsibility to accept as true the evidence favorable to the plaintiff. [Citation.]” (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291.)

The plaintiff must also overcome substantive defenses to demonstrate a probability of prevailing. (*RGC Gaslamp, LLC v. Ehmcke Sheet Metal Co., Inc.* (2020) 56 Cal.App.5th 413, 434; *Flatley v. Mauro* (2006) 39 Cal.4th 299, 323 [no probability of prevailing where claims are barred by the litigation privilege under Civil Code section 47.]

III. Discussion

A. Timeliness.

The Opposition contends that the motion is untimely. CCP section 425.16, subdivision (f), states:

The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.”

The threshold argument that the motion is untimely is meritless. An anti-SLAPP motion may be filed “within 60 days of the service of the complaint or, in the court’s discretion, at any later time upon terms it deems proper.” (CCP § 425.16, subd. (f).) CCP section 1013, extends that time based on the manner of service and applies to anti-SLAPP motions. (*Lam v. Ngo* (2001) 91 Cal.App.4th 832, 842.) Service by email extends the deadline by two court days. (CCP § 1013, subd. (g); § 1010.6, subd. (a)(3)(B).)

The proof of service shows that Cross-Complainants served the FACC by email on March 11, 2024. Sixty (60) days after March 11, 2024, was Friday, May 10, 2024. Two court days after that fell on Tuesday, May 14, 2024. Ley served and filed the anti-SLAPP motion on May 14, 2024.)

The motion is timely.

B. Litigation Privilege

In the FACC, Cross-Complainants make several allegations of wrongdoing which are related to the recording of the mechanic’s lien. (FACC ¶¶ 33-37; 40.) Defendants allege that, among other things, Ley breached the contract by filing the mechanic’s lien. (FACC ¶ 40.) Defendants further assert that the mechanic’s lien has led to nearly two million dollars in damages. (FACC ¶ 37.)

Ley first bears the burden of establishing that the challenged allegations or claims arise from a protected activity. The focus of the anti-SLAPP statute is “the defendant’s activity that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning.” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 92.) Ley has met its burden because “the filing of a mechanic’s lien constitutes protected activity, even if the lien was invalid or otherwise improper.” (*RGC Gaslamp, LLC v. Ehmcke Sheet Metal Co.* (2020) 56 Cal.App.5th 413, 426.)¹ While Defendants argue that the anti-SLAPP statute does not apply because the allegations involving the protected conduct are only “incidental” to the FACC, the court disagrees. Defendants added the new allegations related to the mechanic’s lien as an element of their breach of contract claim, and in order to bolster the amount of damages they have sustained.

¹ Cross-Defendants argue that the case of *RGC Gaslamp, LLC* is inapplicable because that case involved slander of title whereas this case does not. This argument is without merit. “The anti-SLAPP statute’s definitional focus is not the form of the plaintiff’s cause of action but, rather, the defendant’s activity that gives rise to his or her asserted liability – and whether that activity constitutes protected speech or petitioning.” (*Navellier v. Sletten*, (2002), 29 Cal.4th 82, 92.)

Because Ley has met its initial burden, the burden now moves to Cross-Complainants to demonstrate that the FACC is both legally sufficient and supported by a sufficient prima facie showing of facts supporting a judgment in their favor. (*Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1087.) In addressing the second prong of a special motion to strike, Defendants “must show that any asserted defenses are inapplicable as a matter of law or make a prima facie showing of facts that, if accepted, would negate such defenses. [citation.]” (*Birkner v. Lam* (2007) 156 Cal.App.4th 275, 285; see also *Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255, 1263, fn. 7 [if alleged conduct is subject to litigation privilege, plaintiff cannot establish probability of prevailing to defeat an anti-SLAPP motion].)

Ley preemptively argues that Defendants cannot carry their burden because the allegations are based on the mechanic’s lien or lis pendens and are barred by the litigation privilege. The litigation privilege “generally protects from tort liability any publication made in connection with a judicial proceeding.” (*Jacob B. v. County of Shasta* (2007) 40 Cal.4th 948, 952.) A privileged publication is one that is made in a judicial or quasi-judicial proceeding, by a litigant or other participant authorized by law, to achieve the objects of the litigation, and that has some connection or logical relation to the action. (Civ. Code § 47, subd. (b)(2).) The litigation privilege is “simply a test of connectedness or logical relationship to litigation.” (*Blanchard v. DIRECTV, Inc.* (2004) 123 Cal.App.4th 903, 922.) Further, “any doubt about whether the privilege applies is resolved in favor of applying it. [Citation.]” (*Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 913.)

The acts of recording a mechanic’s lien and filing a lis pendens are covered by the litigation privilege. (*Alpha Omega Dev. v. Whillock Contracting* (2011), 200 Cal.App.4th 656, 669; *RGC Gaslamp, LLC, supra* 56 Cal.App.5th 413, 446 [filing a mechanic’s lien is privileged conduct even if the lien itself is improper].) Cross-Defendants argue that regardless of this privilege, however, they have a likelihood of prevailing on the merits of the claims. Specifically, Defendants argue that this lien itself is defective and in an improper amount. However, “any deficiencies in the lien procedure [are] a matter of defense to the action and [do] not mitigate against the privilege.” (*Frank Pisano Associates v. Taggart* (1972) 29 Cal.App.3d 1, 25.)

Cross-Complainants’ allegations that the filing of the mechanic’s lien is the basis of its breach of contract claim is barred by the litigation privilege. Likewise, Defendant’s references to damages caused by the filing of the mechanic’s lien are also barred.

Based on the foregoing, Plaintiff’s special Motion to Strike claims of first amended cross-complaint is **GRANTED** as to: as to:

1. ¶ 33, lines 21-25, in their entirety
2. ¶ 34, line 2 beginning at “as was mistakenly stated. . .” through lines 6;

3. ¶ 35 in its entirety;
4. ¶ 36 in its entirety;
5. ¶ 37 in its entirety; and
6. ¶ 40, lines 11-12.

Cross-Defendant Ley is permitted to file a motion for attorney's fees as the prevailing party to this motion.

The Clerk shall provide notice of this Ruling to the parties forthwith. Cross-Defendant Ley to submit a formal order pursuant to Rule of Court 3.1312 in conformity with this ruling.