

Town and Country Community LP v. Lomeli

Hearing Date:

Lomeli's Motion to Strike the Complaint (CCP § 425.16)

Plaintiff's Motion to Strike Cross-Complaint (CCP § 425.16)

Case No. 23CV01718

December 5, 2023

PARTIES/ATTORNEYS

Plaintiff and Cross-Defendant	Town and Country Community LP dba Town & Country Mobile Estates	Dowdall Law Offices, A.P.C. Terry R. Dowdall, Esq. Marvin B. Adviento, Esq.
Defendant and Cross-Complainant	Sandra Lomeli	The Law Office of Philip F. Sinco Philip F. Sinco

PROPOSED TENTATIVE

On January 5, 2018, plaintiff Sandra Lomeli (Lomeli) purchased a mobile home situated on Space 24 at defendant Town & Country Mobile Home Estates Park (Park) located in Orcutt. Lomeli executed a lease agreement with Park on January 8, 2018 for Space 24, with a term beginning on January 8, 2018, and ending on January 7, 2048. Beginning about May 2020, Lomeli began to construct a block wall to increase the usable space of her lot and to address her concerns about stormwater flowing down the adjacent slope because it previously caused damage to her mobile home steps. Construction finished in September 2020. On March 10, 2021, Gordon Hassett (Park manager) and Benjamin Quake (former assistant manager for Park) entered Space 24 and moved the lot line markers that Lomeli had installed.

Later that day, Lomeli called the California Department of Housing and Community Development to report that the lot line had been moved illegally. She was advised to contact the County, which she did on April 10, 2021. On August 6, 2021, after conducting an investigation, the County Planning and Development Department (which is responsible for implementing permit processes based on zoning/land use standards) informed the Park: "The Santa Barbara County Assessor's Map lot lines do not match the current site condition. Please be advised that a violation is confirmed to exist on your property. You will be required to take steps to abate the violation." On September 7, 2021, the Park issued Lomeli a seven day notice to cure violations mandating the removal of the retaining wall, among other things.

On July 13, 2023, Park filed the operative first amended complaint (FAC), alleging that the lot width is 50 feet; that Lomeli's wall encroaches onto the common area; that Lomeli encroached on the common space without the Park's permission; and that County issued a citation against Park for the purported lot line violation. The FAC alleges causes of action for: (1) breach of contract (both the Lease Agreement and Rules and Regulations of Park); (2) injunction against the violation of the Rules and Regulations; (3) indemnity and contribution from Lomeli for costs associated with the County issued violation; (4) trespass; and (5) negligent trespass. Lomeli filed an answer on August 29, 2023.

On August 29, 2023, Lomeli filed a cross-complaint alleging the following causes of action: (1) injunctive and declaratory relief; (2) intentional infliction of emotional distress, retaliation, and harassment; (3) violation of 25 CCR § 1116; (4) breach of contract (Lease Agreement) provision requiring mediation prior to instituting court action; (5) breach of covenant of quiet enjoyment. Park filed an answer on October 30, 2023.

On September 21, 2023, Lomeli filed a motion to strike certain allegations in the complaint pursuant to Code of Civil Procedure section 425.16, the anti-SLAPP legislation. On September 25, 2023, Park filed a motion to strike the entire cross-complaint pursuant to anti-SLAPP. The court is presented with competing Anti-Slapp motions.

Answers have been filed to the complaint and the cross-complaint. Unlike other motions to strike, an anti-SLAPP motion may be filed after defendant has answered the complaint. (See *Dixon v. Sup.Ct. (Scientific Resource Surveys, Inc.)* (1994) 30 Cal.App.4th 733, 739-740.)

Legal Standards Applicable to Anti-SLAPP Motions

The legal standards under the anti-SLAPP scheme are settled. "A SLAPP suit—a strategic lawsuit against public participation—seeks to chill or punish a party's exercise of constitutional rights to free speech and to petition the government for redress of grievances. [Citation.] The Legislature enacted . . . section 425.16—known as the anti-SLAPP statute—to provide a procedural remedy to dispose of lawsuits that are brought to chill the valid exercise of constitutional rights. [Citation.]" (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055–1056 [internal citations omitted].) "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff

has established that there is a probability that the plaintiff will prevail on the claim.” (Code Civ. Proc., § 425.16, subd. (b)(1).)¹

Under the statute, an “ ‘act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue’ includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.” (§ 425.16, subd. (e).)

To determine whether a cause of action (or complaint) should be stricken under the anti-SLAPP statute, section 425.16 establishes a two-part test:

- Under the first part, the party bringing the motion has the initial burden of showing that the cause of action arises from an act in furtherance of the right of free speech or petition—i.e., that it arises from a protected activity. (*Zamos v. Stroud* (2004) 32 Cal.4th 958, 965.)
- Once the moving party has met its burden, the burden shifts to the other party to demonstrate a probability of prevailing on the cause of action. (*Ibid.*)

Only a cause of action that satisfies both parts 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.)

In determining whether defendant has sustained its initial burden, the court considers the pleadings, declarations, and matters which may be judicially noticed. (*Brill Media Co., LLC v. TCW Group, Inc.* (2005) 132 Cal.App.4th 324, 329.)

As detailed below, the court finds that neither defendant Lomeli nor cross-cross-defendant Park have sustained their initial burden under the Anti-Slapp scheme.

Lomeli’s Motion to Strike the FAC

Here, Lomeli asserts that she engaged in “protected activity” when she petitioned the government by making a report to the County alleging that the Park may have violated Health and Safety Code section 18610.5 by moving lot line

¹ All future references are to the Code of Civil Procedure unless indicated otherwise.

markers on the southern border of her lot. The County opened an investigation into her complaint. “The constitutional right to petition ... includes the basic act of filing litigation or otherwise seeking administrative action.” (*Ludwig v. Superior Court* (1995) 37 Cal.App.4th 8, 22.) Lomeli’s report is protected activity. However, Lomeli fails to meet her threshold burden to show the acts alleged in Park’s complaint arose from her report to the County.

To prevail on the first step, defendants must identify all allegations of protected activity and all claims for relief supported by those allegations. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396.) Lomeli moves to strike the following allegations as based on protected activity. She asserts they fall into one or more of three types: (1) allegations that Lomeli made false statements to the County about the Park; (2) Lomeli caused citation(s) to be issued by the County to the Park; and/or (3) Lomeli is liable to the Park for any fines, penalties, etc. imposed by the County.

The first group of allegations precede all enumerated causes of action and are incorporated by reference:

- [the PARK seeks] “...indemnification for any penalties, fines or forfeitures...” (FAC, 2:11);
- “The citation [issued to the PARK by the COUNTY] is based on false and untrue facts because Plaintiff has never altered a lot line width at space 24;” (FAC, 9:17-18);
- “Lomeli complaints of wrongful conduct by the Plaintiff with respect to lot line width is false and untrue.” (FAC, 9:19-20);
- “... cause issuance of citations [to the PARK] from the LEA for violations based on acts and omissions by Defendants including Lomeli.” (FAC, 10:20-21);
- “She has caused citations to be issued by the LEA ... as a consequence and proximate result of her acts and omissions” (FAC, 12:10-12); and
- “The LEA [i.e., the COUNTY] ..., may seek to impose fines on the Plaintiff claiming Plaintiff was at fault for changes in lot lines and other unpermitted activity. However, the liability for all harms regarding the lot lines, encroachment, damages and loss occasioned as a result of the conditions at and about space 24 is the direct and proximate result of the acts and omissions of the Defendant ... This is further damage to Plaintiff resulting from Lomeli’s conduct.” (FAC, 12:20-27).

The following allegation is found in the first cause of action:

- “Moreover, Lomeli’s acts and omissions have caused the LEA to issue a citation against the Plaintiff for actions and omissions solely her own. Lomeli’s acts and omissions therefore have caused damage to the Plaintiff by reason of the actions and requirements of the LEA against the

Plaintiff. Lomeli is responsible for the damages she, and DOES 1 through 10, as active wrongdoers, have caused Plaintiff.” (FAC, 15:19-25). •

Plaintiff challenges the following allegations in the third cause of action:

- “False complaints made by the Defendant have caused the LEA to take official action against Plaintiff. The citations, responses thereto, and now further administrative threats of fines, sanctions and further hearings continue to exacerbate the damages, costs, and time and effort required for the Plaintiff to rectify the record into seek restoration and remediation of the damages done to space 24 and surrounding area. This damages as a consequence of misrepresentations and false complaints made by the Defendant. Based on the foregoing allegations, Plaintiff alleges that Lomeli breached her duty to Plaintiff under the agreements entered into between them.” (FAC 20:23-28; and 21:1-2);
- “Any liabilities, forfeitures, seizures, fines, sanctions or otherwise, charged to or against the Plaintiff or any of its agents and employees by the LEA or any third party, were caused by the acts and omissions of Lomeli. (FAC, 21:5-8)6
- LOMELI “...falsely represented to the LEA that it was the Plaintiff who was seeking to change lot lines as to space 24. Such representation is false in fact.” (FAC, 22:12-14);
- “...and time and expense incurred in dealing with the vindication and correction of false facts leveled against the Plaintiff, ... (FAC, 22:24-26).

Plaintiff challenges the following from the Prayer of the SAC:

- ... for full reimbursement of monies imposed on the Plaintiff “...as a consequence of penalties, fines, or forfeitures imposed by Santa Barbara County or any other governmental agency.” (FAC, 26:5-7.)

The motion does not seek to strike any causes of action. At one time, the Courts of Appeal were in disagreement as to whether a special motion to strike could be surgically employed to eliminate allegations or whether such motions could only target entire causes of action. This dispute was resolved in favor of the more surgical approach in *Baral v. Schnitt* (2016) 1 Cal.5th 376, 392-394. “The anti-SLAPP procedures are designed to shield a defendant's constitutionally protected conduct from the undue burden of frivolous litigation. It follows, then, that courts may rule on plaintiffs’ specific claims of protected activity, rather than reward artful pleading by ignoring such claims if they are mixed with assertions of unprotected activity.” (*Id.* at p. 393, italics omitted.) “[L]ike a conventional motion to strike,” a special motion to strike “may be used to attack parts of a count as pleaded.” (*Ibid.*)

In other words, analysis of an anti-SLAPP motion is not confined to evaluating whether an entire cause of action, as pleaded by the plaintiff, arises from protected activity or has merit. Instead, courts should analyze each claim for relief — each act or set of acts supplying a basis for relief, of which there may be several in a single pleaded cause of action — to determine whether the acts are protected and, if so, whether the claim they give rise to has the requisite degree of merit to survive the motion. (*Id.* at pp. 393–395; *Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1010.)

However, not all allegations are subject to a special motion to strike. Allegations that “merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute.” (*Baral, supra*, 1 Cal.5th at p. 394.) Thus, allegations that are “‘merely incidental’ or ‘collateral’ are not subject to” a special motion to strike. (*Ibid.*) If a claim is supported by both protected and unprotected activities, the court disregards the unprotected activity at this stage. (*Id.*) Defendants must then show that the challenged claim arises out of the allegations of protected activity and that the allegations of protected conduct are not merely incidental or included to provide context or background. (*Id.*; see also *Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1012.)

“A claim arises from a protected activity when that activity underlies or forms the basis for the claim.” (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1062.) Courts must “consider the elements of the challenged claims and what actions by defendant supply those elements and ... form the basis for liability.” (*Laker v. Bd. of Trustees* (2019) 32 Cal.App.5th 745, 771.) The protected activity must “supply elements of the challenged claim” such that “but for” the defendant’s “alleged actions taken in connection with” the protected activity, the plaintiff’s claim would have no basis. (*Park, supra*, 2 Cal.5th at 1063–64.) The “mere fact that an action was filed after protected activity took place does not mean the action arose from that activity ...” (*Id.* at 1063.) If the protected activity supplies only “evidence of the parties’ disagreement,” merely leads to the liability creating activity, or provides only evidentiary support for the plaintiff’s claim, the allegation is not subject to attack under CCP §425.16. (*Id.* at 1064.)

Thus, the court must determine whether the allegations Lomeli proposes to be stricken form the basis for the claims alleged. Lomeli herself has failed to undertake this analysis, which is a sufficient reason to deny the motion. (*Quantum Cooking Concepts, Inc. v. LV Assocs., Inc.* (2011) 197 Cal. App. 4th 927, 934—“Rule 3.1113 rests on a policy-based allocation of resources, preventing the trial court from being cast as a tacit advocate for the moving party’s theories by freeing it from any obligation to comb the record and the law for factual and legal support that a party has failed to identify or provide.”)

In any event, none of the allegations form the basis for the claims alleged. The first cause of action for breach of contract is based on defendant's failure to obtain consent before undertaking construction of the wall and her failure to obtain building permits from local government for doing so, in breach of her lease and the Rules and Regulations of the Park. (FAC, ¶¶ 38-46.)

The second cause of action is for an injunction to require Lomeli to cease and desist from maintaining and continuing to occupy and possess the unpermitted, unauthorized, unapproved excavation, alterations, encroachment and trespass. (FAC, ¶ 61.) Section 425.16 applies only to a cause of action, not to a remedy. Injunctive relief is a remedy, not a cause of action. (*Guessous v. Chrome Hearts, LLC* (2009) 179 Cal.App.4th 1177, 1187; *City of South Pasadena v. Department of Transportation* (1994) 29 Cal.App.4th 1280, 1293.)

The third cause of action is for indemnity and contribution from Lomeli for costs associated with the County issued violation. (FAC, ¶ 67.) Facially, this presents a closer question simply because the violation was issued as a consequence of Lomeli's report, but Lomeli's report to the County does not form the basis for this cause of action or any claim alleged therein; instead it appears to be merely incidental or included to provide context or background. Her report does not support a basis for relief in this cause of action because plaintiff complains of Lomeli's pre-report conduct in constructing the wall without consent or permit.

The fourth and fifth causes of action for trespass and negligent trespass are for Lomeli's encroachment of an area of approximately 540 square feet of Park's land. (FAC, ¶¶ 72-85.) Lomeli's report to authorities supplies no element of these claims. (CACI 2000.)

In her Reply, Lomeli focused on Park's failure to produce evidence that Lomeli's report to the County was false, asserting: "In order for the PARK to demonstrate a probability of success, it is necessary for the PARK to provide admissible evidence that LOMELI either intentionally provided false information to the COUNTY or provided information in reckless disregard of the truth. In short, the PARK needs to demonstrate that LOMELI provided information to the COUNTY with malice." (Reply, p. 2-3.) However, as demonstrated above, none of the causes of action "arise from" Lomeli's communication with the County, rendering them incidental to the FAC.

In the end, the identified allegations appear to be included for context and while they may not be irrelevant to the causes of action (e.g., the truth or falsity of the reports are not relevant to any of the causes of action in the FAC), they do not form the basis for any of these actions. The protected activity must "supply elements of the challenged claim" such that "but for" the defendant's "alleged actions taken in connection with" the protected activity, the plaintiff's claim would

have no basis. (*Park, supra*, 2 Cal.5th at 1063-64.) None of the alleged causes of action rely on Lomeli's report to the County as a element of their claim. As the *Park* court noted, the "mere fact that an action was filed after protected activity took place does not mean the action arose from that activity" (*Park, supra*, 2 Cal.5th at 1063.) This is dispositive of the first-stage inquiry.

Defendant Lomeli has not met her burden on the first step in the analysis. Because Lomeli has not met her burden to show that the complaint is subject to the anti-SLAPP statute, we need not consider whether Park demonstrated it is likely to succeed on the merits. The burden does not shift. The motion is denied.

Park's Motion to Strike the Cross-Complaint

Park argues that Lomeli's cross-complaint is an attack on Park's rights to claim its own property which she improperly possessed and concludes that the cross-complaint was necessarily filed in retaliation to the FAC. Park moves to strike the cross-complaint in its entirety. Park, however, fails to meet its threshold burden to show the acts alleged in Lomeli's cross-complaint were in furtherance of its rights of petition or free speech.

Park is correct that filing a lawsuit is an exercise of the constitutional right of petition. (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1115.) However, Park wrongly focuses on Lomeli's filing of the cross-complaint as a supposed act of retaliation without demonstrating, as it must under the anti-SLAPP statute, that the amended cross-complaint "alleges acts in furtherance of [Park's] right of petition or free speech in connection with a public issue." (*DuPont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal.App.4th 562, 565.) A cross-complaint or independent lawsuit filed in response to, or in retaliation for, threatened or actual litigation is not subject to the anti-SLAPP statute simply because it may be viewed as an oppressive litigation tactic. No lawsuit is properly subject to a special motion to strike under section 425.16 unless its allegations arise from acts in furtherance of the right of petition or free speech. (*Kajima Engineering and Const., Inc. v. City of Los Angeles* (2002) 95 Cal.App.4th 921, 924.) Park's error is fatal to the motion: The amended cross-complaint alleges, with one exception, causes of action arising from Park's pre-lawsuit interactions with Lomeli, not from acts in furtherance of Park's right of petition or free speech.

For example, the second cause of action is for intentional infliction of emotional distress, retaliation, and harassment, which is based on Park's "illegally moving [Lomeli's] lot line in retaliation for making a complaint to the California Housing and Community Development Department and the County of Santa Barbara." (Cross-Complaint, ¶ 66.) The third cause of action alleges the Park was not in compliance with the California Code of Regulations that required the ground

to be sloped to provide storm drainage run off. (Cross-Complaint, ¶ 68.) The fourth cause of action alleges that Park breached the Lease Agreement by its failure to agree to mediate any disputes arising out of that agreement (and thus filing a complaint straight away). (Cross-Complaint, p. 32, ¶ 2.) The fifth cause of action alleges that Park has breached Lomeli's covenant of quiet enjoyment. (Cross-Complaint, p. 32, ¶ 4.)²

With the exception of the fourth cause of action, Park was not exercising its right of petition at the time of the alleged acts; it was engaged in a property line dispute with its tenant or otherwise running its business. In other words, the alleged improper conduct does not arise from Park's petitioning activities but rather from pre-litigation conduct. The second, third, and fifth causes of action do not arise from Park's commencement of litigation. (See *ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1003 ["'the act underlying the plaintiff's cause' or 'the act which forms the basis for the plaintiff's cause of action' must itself have been an act in furtherance of the right of petition or free speech"].)³ Stated differently, some, but not all, cross-complaints are subject to anti-SLAPP motions. "Although a cross-complaint may be subject to a section 425.16 motion, not all cross-complaints would qualify as SLAPP suits. A defendant may file a cross-complaint against the plaintiff for any existing cause of action regardless of its nature and origins. [Citation.] Only those cross-complaints alleging a cause of action arising from the plaintiff's act of filing the complaint against the defendant and the subsequent litigation would potentially qualify as a SLAPP action. [Citation.] For example, a person may attempt to bring a SLAPP suit alleging that libelous allegations or statements were contained in the complaint itself. However, because defendant's allegations are privileged communications under Civil Code section 47, the suit would be meritless. [Citation.] [¶] A compulsory cross-complaint on a 'related cause of action' against the plaintiff [citation] would rarely, if ever, qualify as a SLAPP suit arising from petition activity. By definition, a 'related cause of action' is 'a cause of action which arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause of action which the plaintiff alleges in his complaint.' [Citation.] The SLAPP suit is not 'related' to the transaction or occurrence which is the subject of the plaintiff's complaint, but arises out of the litigation process itself." (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 651.) Here, the allegations of the second, third, and fifth causes of action are all compulsory, and do not qualify as a SLAPP suit arising from petition activity.

The fourth cause of action does arise from the petitioning activity. In this cause of action, Lomeli alleges that by filing a legal action before commencing alternative dispute resolution procedures, Park has caused her significant monetary damages. The opposition does not attempt to show a probability of success on the

² The first cause of action is for injunctive relief, which is not subject to § 425.16. See above.

³

merits of this cause of action, instead stating only that Lomeli has set forth “more than admissible evidence in her Declaration . . . to demonstrate merit and a probability of success on her claim.” (Opposition, p. 10, ll. 16-19.) The declaration does not address the fourth cause of action. The motion to strike this cause of action is granted.

Park has not demonstrated that the allegations in the first, second, third, and fifth causes of action in the cross-complaint arise from acts in furtherance of its right of petition or free speech. Because Park has not met its burden to show that these causes of action are subject to the anti-SLAPP statute, the court need not consider whether Lomeli demonstrated she is likely to succeed on the merits. The motion is denied.

Park requests it be awarded fees under section 425.16(c)(1). The entitlement to fees and costs where the defendant prevails in part, however, is not absolute. A party who partially prevails on an anti-SLAPP motion must generally be considered a prevailing party unless the results of the motion were so insignificant that the party did not achieve any practical benefit from bringing the motion. (*Maleti v. Wickers* (2022) 82 Cal.App.5th 181, 232, as modified on denial of reh'g (Sept. 9, 2022), review denied (Nov. 22, 2022).) The court finds that to be the case here. Although the motion is granted as to the fourth cause of action, Park's request for fees is nonetheless denied.

Appearances required for oral argument.