Filed 10/11/18 Rueda v. Pacquiao CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

GABRIEL RUEDA, Plaintiff and Respondent, v. EMMANUEL D. PACQUIAO et al., Defendants and Appellants.	B277840 (Los Angeles County Super. Ct. No. BC611486)

APPEAL from orders of the Superior Court of Los Angeles County, David Sotelo, Judge. Affirmed.

O'Melveny & Myers, David Marroso, Jason Lueddeke and Daniel J. Innamorati, for Defendant and Appellant Emmanuel D. Pacquiao.

Liang Ly, John K. Ly and Jason L. Liang, for Defendant and Appellant Keith M. Davidson.

Khan Law Office, Amman A. Khan; Benedon & Serlin, Gerald M. Serlin and Wendy S. Albers, for Plaintiff and Respondent.

The parties in this case effectively agree they were involved in "settlement" communications to resolve a dispute. The issue is whether those communications constituted *prelitigation* settlement communications protected by Code of Civil Procedure section 425.16, the anti-SLAPP statute.[1] That question in large part reduces, on the facts here, to whether an attorney for one side in the dispute who seeks to resolve it by (among other things) demanding a legal release for his clients could make such a demand even while believing the other party was not seriously contemplating litigation.

I. BACKGROUND

A. The Facts As Pled in the Operative Complaint

Plaintiff and respondent Gabriel Rueda (Rueda) arranged an introduction that, as he tells it, facilitated the lucrative televised boxing match between Floyd Mayweather, Jr., (Mayweather) and defendant and appellant Emmanuel "Manny" Pacquiao (Pacquiao).

Rueda, a waiter and actor, knew Leslie Moonves (Moonves), the former head of CBS Corporation, because Moonves regularly patronized the West Hollywood restaurant where Rueda worked. Rueda knew Pacquiao's boxing trainer, Frederick "Freddie" Roach (Roach), because Roach also trained Rueda's son. Rueda at one point suggested to Moonves that he help negotiate a Mayweather-Pacquiao fight, and Moonves asked Rueda to introduce him to Roach for that purpose.

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[1] Undesignated statutory references that follow are to the Code of Civil Procedure.

Moonves assured Rueda he "would be 'taken care of financially'" if the fight occurred. When Rueda told Roach about Moonves's interest in setting up a match between Pacquiao and Mayweather, Roach promised Rueda "a finder's fee" if the fight took place.

Rueda, Moonves, and Roach met in May 2014. Roach said Pacquiao knew about the meeting and "specifically authorized" payment of a finder's fee to Rueda if the fight occurred. Moonves and Roach agreed at the meeting that Rueda would be paid two percent of the gross proceeds earned by the Pacquiao-Roach team and CBS-Showtime.[2]

The Pacquiao-Mayweather fight took place in May 2015 and was jointly broadcast by Showtime and HBO. Gross proceeds from the broadcast were reportedly in the hundreds of millions of dollars, and Pacquiao is said to have earned more than $160 million. Showtime provided Rueda a ticket to the fight in Las Vegas, one night's free lodging, and $10,000 to cover other expenses.

The month after the fight, Rueda asked Moonves for his finder's fee. Moonves told Rueda that CBS and Showtime made no money on the fight but he would facilitate a discussion with the Roach-Pacquiao camp for payment to Rueda of their portion of the fee. The next day, Rueda received a call from defendant and appellant Keith Davidson (Davidson), who said he was calling on behalf of Roach and Pacquiao. Rueda asked Davidson if he was calling in relation to his conversation with Moonves, and Davidson confirmed he was.

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[2] Showtime Networks is a wholly owned subsidiary of CBS Corporation.

When Davidson and Rueda met the following day at a coffee shop, Davidson told Rueda he was an attorney for Roach and Pacquiao (plus "'a few other powerful people'") and asked Rueda, "[W]hat do you want?" Rueda told Davidson that Moonves, Roach, and Pacquiao had agreed to pay him a two percent finder's fee and Rueda (in the words of his complaint) "made a settlement proposal." Davidson responded he would get back to Rueda in a few days.

Several days later, Davidson met with Rueda again at the same coffee shop and "told [him] to accept payment of $50,000 'tax free' and 'release everybody, including Moonves, Showtime and CBS.'" Davidson told Rueda that if did not take the "'offer,'" he would lose his job as a waiter and "'never work as an actor in this town again.'"[3] If, on the other hand, Rueda signed the release, Davidson said he would use his contacts at Creative Artists Agency to obtain more acting roles for him. Davidson gave Rueda 48 hours to "'accept' the 'offer'" and refused to entertain any "'counter-offers.'" During the conversation, Davidson's demeanor was "very aggressive" and three people who overheard the conversation told Rueda, after Davidson left, that "they wanted to call the police."

Rueda did not accept Davidson's offer. Over the next several weeks, people associated with Roach's boxing gym

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[3] After this meeting with Davidson, Rueda spoke to management at the restaurant where he worked. Rueda was told Davidson had called the restaurant and the restaurant would fire Rueda if he did not take Davidson's offer or if he pursued a claim against CBS. Rueda, however, ultimately did not lose his job as a waiter.

taunted Rueda at his workplace, filmed and touched him without his consent, and followed him at the end of his restaurant shifts late at night. Someone slashed both rear tires of Rueda's car. Rueda filed a police report and complained Davidson threatened him and people were watching and following him. When police officers contacted Davidson to investigate Rueda's complaints, Davidson admitted to contacting Rueda's employer.

B. Procedural History

Approximately eight months after Rueda met with Davidson, Rueda sued Pacquiao, Roach, Davidson, CBS, and Showtime, alleging causes of action based on theories of contract, unjust enrichment, fraud, extortion, and intentional infliction of emotional distress (IIED). Pacquiao and Davidson filed special motions to strike Rueda's causes of action against them for extortion and IIED pursuant to section 425.16.[4]

Pacquiao and Davidson contended Rueda's extortion and IIED claims arose from Davidson's protected activity, namely, a

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[4] The Legislature enacted section 425.16 in order "[t]o combat lawsuits designed to chill the exercise of free speech and petition rights (typically known as strategic lawsuits against public participation, or SLAPPs) . . . ." (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1060 (*Park*).) As we will describe in more detail, the statute permits a defendant to bring a special motion to strike claims that "aris[e] from" the defendant's protected activity, as defined in the statute. (§ 425.16, subd. (b).) If the defendant shows the challenged claim arises from protected activity, the court must grant the motion to strike unless the plaintiff establishes "a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b).)

settlement offer made in anticipation of litigation. Defendants also contended Rueda could not establish a probability of prevailing on either claim because the litigation privilege (Civ. Code, § 47, subd. (b)) barred both claims and Rueda could not establish the elements of either claim in any event. In a declaration, Davidson asserted he never threatened Rueda or his job.

Rueda opposed defendants' special motions to strike. He argued neither defendant could show his claims were SLAPPs because the complained-of conduct was illegal as a matter of law and not undertaken in anticipation of litigation. Rueda also maintained he could show a probability of prevailing on both claims.

In his own declaration accompanying his opposition to the anti-SLAPP motion, Rueda asserted he was not contemplating litigation at the time he met with Davidson. Rueda said when he met with Moonves to discuss his compensation after the fight, he and Moonves were the only people at the meeting and Moonves gave no indication he would renege on their agreement. Rueda said when he first met with Davidson, Davidson "repeatedly" asked at that meeting what his "'Plan B'" and "'Plan C'" would be if he did not receive what he wanted and Rueda "repeatedly" responded "there was no 'Plan B' or 'Plan C.'" Rueda also stated Davidson appeared to have minimal, if any, knowledge about the terms of his agreement with Moonves and Roach. By the time of the second meeting with Davidson, Rueda averred he was surprised to see only Davidson present because he had asked to speak with Pacquiao and Roach directly to obtain fight revenue information. According to Rueda's declaration, Davidson conveyed a "clear" message at that second meeting: if Rueda did

not "give up [his] claim to the agreed Finder['s] Fee and take $50,000 in cash under the table . . . [,] Davidson would ensure that [Rueda would] lose [his] job at the restaurant, never work in town as an actor again, and risk getting physically harmed." Rueda declared Davidson told him he was "dealing with powerful people that did not care if [Rueda] got hurt" and added, "'this was boxing.'" Rueda also said Davidson told his restaurant employer Rueda "was 'blackmailing' Moonves, Moonves would pay [Rueda] a sum of money to make it stop, but [Rueda] wanted more." Rueda further said his employer told him he would take Moonves's side over Rueda's because of Moonves's importance to the restaurant.

The trial court held separate hearings on defendants' anti-SLAPP motions. Both Pacquiao and Davidson argued Rueda made assertions in his opposition documents that were new or contrary to his complaint and the trial court should not consider those statements insofar as they contradicted the complaint. Counsel for Davidson also highlighted evidence indicating Rueda had hired an attorney between his two meetings with Davidson (albeit unbeknownst to Davidson or the other defendants), and counsel contended retention of an attorney was inconsistent with Rueda's assertion that he was not contemplating litigation at the time.[5]

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[5] Rueda's retention of an attorney was described in a declaration filed by that attorney in connection with a separate proceeding in this case. In the declaration, the attorney states Rueda retained him "[o]n or about June 28, 2015"—which was three days after Rueda's initial one-on-one meeting with Davidson and one day before their second meeting. Rueda's attorney said he was hired "to advise [Rueda] concerning his

The trial court denied both defendants' anti-SLAPP motions. The court reasoned Pacquiao and Davidson failed to show Rueda's extortion and IIED claims arose from protected conduct because "[e]ven broadly construed, the complained of conduct does not qualify as pre-litigation activity." The court distinguished cases in which a party "explicitly 'threatened [ ] legal action'" or attached a draft complaint to a demand letter. In Rueda's case, by contrast, the court concluded the "complaint allege[d] nothing about a threat of legal action, nothing about a draft pleading, [and] contain[ed] no words and phrases such as law, legal, court or litigation, legal action or pleading." The court found the complaint's references to "settlement," "offer," "release," and Davidson's status as an attorney were not sufficient to bring Rueda's claims within the ambit of the anti-SLAPP statute because the complaint did not "allege or even hint that anyone was actually contemplating filing a lawsuit."

II. DISCUSSION

When Rueda met with Davidson two months after the Mayweather-Pacquiao fight that Rueda allegedly helped to engineer, he was hoping to receive the benefit of the alleged

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direct negotiations with certain parties for his claims to a finder's fee and other claims in connection with the May 2, 2015 boxing match between Floyd Mayweather and Emmanuel D. 'Manny' Pacquiao" and he "was not retained to conduct any negotiations on [Rueda's] behalf at that time." The attorney's declaration was filed before Pacquiao and Davidson brought their anti-SLAPP motions, but neither defendant referred to the declaration in his motion or asked the trial court to take judicial notice of the declaration.

bargain he had made with Moonves and Roach. Because a personal attempt to persuade someone to comply with a promise is not necessarily activity undertaken in anticipation of litigation that is under serious consideration, and because the record does not otherwise demonstrate Rueda was seriously contemplating litigation at the time of their meeting—or that Davidson had reasonable grounds to believe otherwise—the trial court did not err in denying Pacquiao and Davidson's special motions to strike.

A. The Anti-SLAPP Statute and the Standard of Review

Courts engage in a two-step process when considering special motions to strike claims "brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances" (§ 425.16, subd. (a)). At step one, the court assesses whether the moving defendant has "establish[ed] that the challenged claim arises from activity protected by section 425.16." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384 (*Baral*).) As relevant here, protected activity "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, [and] (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 . . . ." (§ 425.16, subd. (e).) "A claim arises from protected activity when that activity underlies or forms the basis for the claim." (*Park*, *supra*, 2 Cal.5th at p. 1062.) Protected activity forms the basis of a claim where the activity "'*itself* [was] an act in furtherance of the right of petition or free speech.' [Citations.]" (*Id.* at p. 1063.)

Only if a court is satisfied the defendant has made the required showing that the challenged claim arises from protected activity does step two come into play. (*Baral*, *supra*, 1 Cal.5th at p. 384.) At that point, "the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success." (*Ibid.*) To be stricken as a SLAPP, a claim must "satisf[y] *both* prongs of the anti-SLAPP statute—i.e., [it must] arise[ ] from protected speech or petitioning *and* lack[ ] even minimal merit . . . ." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.)

We review the denial of an anti-SLAPP motion de novo. (*Park*, *supra*, 2 Cal.5th at p. 1067.)

B. Rueda's Claims Do Not Arise from Prelitigation Activity Protected by the Anti-SLAPP Statute

The anti-SLAPP statute applies not only to statements made during the course of pending litigation; the statute also protects certain "'communications preparatory to or in anticipation of the bringing of an action . . . .'" (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1115, citations omitted; *Digerati Holdings, LLC v. Young Money Entertainment, LLC* (2011) 194 Cal.App.4th 873, 886-887 (*Digerati*).) A statement made before litigation has commenced is protected under section 425.16 if it "'concern[s] the subject of the dispute' and is made 'in anticipation of litigation "contemplated in good faith and under serious consideration."'" (*Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255, 1268 (*Neville*), quoting

Action Apartment Assn., Inc. v. City of Santa Monica (2007) 41 Cal.4th 1232, 1251 (*Action Apartment*).)[6]

The good faith requirement "focuses on whether the litigation was genuinely contemplated" (*People ex rel. Fire Ins. Exchange v. Anapol* (2012) 211 Cal.App.4th 809, 824 (*Anapol*)), which "ensures that prelitigation communications are actually connected to litigation and that their protection therefore furthers the anti-SLAPP statute's purpose of early dismissal of meritless lawsuits that arise from protected petitioning activity" (*Bel Air Internet, LLC v. Morales* (2018) 20 Cal.App.5th 924, 941 (*Bel Air*); see also *Anapol*, *supra*, at p. 824 ["The requirement guarantees that hollow threats of litigation are not protected"]). Demands to settle impending or incipient litigation may be protected under the statute. (See, e.g., *Malin v. Singer* (2013) 217 Cal.App.4th 1283, 1293 (*Malin*); *Blanchard v. DIRECTV, Inc.* (2004) 123 Cal.App.4th 903, 918 (*Blanchard*).)

Defendants contend the following facts show litigation was genuinely anticipated when Davidson made the alleged threats

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[6] *Action Apartment*, *supra*, 41 Cal.4th 1232 considered "when a communication regarding prospective litigation is subject to the litigation privilege." (*Id.* at p. 1251.) Our Supreme Court has held that even though the litigation privilege and section 425.16 "are substantively different statutes that serve quite different purposes," cases construing the litigation privilege may be considered "as an aid in construing the scope of section 425.16, subdivision (e)(1) and (2) with respect to the first step of the two-step anti-SLAPP inquiry . . . ." (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 322-323.)

on which Rueda's extortion and IIED claims are based:[7] Rueda knew Davidson was an attorney who represented Pacquiao; Rueda made what he himself characterized as "a settlement proposal" to Davidson; Davidson responded several days later with an "offer" requiring Rueda to "'release everybody'"; and in between the two meetings with Davidson, Rueda retained an attorney. At first blush, these facts concerning settlement and a proposed release do call to mind law and litigation. Upon closer examination in light of the controlling test, however, the facts do not establish Davidson's offer to Rueda "relate[d] to litigation that [was] contemplated in good faith and [then] under serious consideration." (*Action Apartment*, *supra*, 41 Cal.4th at p. 1251.)

In assessing whether Davidson's statements were made in anticipation of litigation, we consider not only evidence of whether each party was himself considering litigation at the time, but also whether the circumstances might have reasonably led either party to believe the other was seriously contemplating litigation. We conclude, as did the trial court, that the facts at the time of Rueda's second meeting with Davidson do not reveal any party was seriously considering litigation in good faith, nor

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[7] Rueda's claims are also based on Davidson's call to his employer and the alleged harassment and intimidation he experienced from members of Pacquiao's boxing gym. Defendants do not contend that conduct is protected activity. Where claims are based on allegations of both protected and unprotected activity, only allegations of protected activity may be stricken under section 425.16. (*Baral*, *supra*, 1 Cal.5th at p. 396.) We focus solely, therefore, on the allegations of protected activity identified by defendants.

that any party could reasonably believe the other side was then undertaking such consideration.

The anti-SLAPP statute does not protect prelitigation statements made under circumstances where future litigation is merely a "possibility" in the way lawsuits are always possible whenever "one party to a contract requests the other party to perform its duties under the agreement." (*Anapol*, *supra*, 211 Cal.App.4th at p. 828; see also *Bel Air*, *supra*, 20 Cal.App.5th at p. 941 ["when a cause of action arises from conduct that is a 'necessary prerequisite' to litigation, but will lead to litigation only if negotiations fail or contractual commitments are not honored, future litigation is merely theoretical rather than anticipated and the conduct is therefore not protected prelitigation activity"].) The record here shows litigation was no more than a theoretical possibility when Davidson allegedly threatened Rueda. At that time, Rueda was doing nothing more than attempting to personally assert his claim to a finder's fee. The mere "possibility of litigation in the event of nonperformance is not enough to conclude the claim is made in anticipation of litigation contemplated in good faith and under serious consideration." (*Anapol*, *supra*, at p. 828.)

Anapol is a helpful guidepost. In that case, insurance companies sued two attorneys in a qui tam action, accusing them of submitting false claims on behalf of insureds. (*Anapol*, *supra*, 211 Cal.App.4th at p. 814.) The attorneys brought special motions to strike under the anti-SLAPP statute, contending their submission of claims on behalf of their clients was protected activity. (*Ibid.*) The Court of Appeal held the mere fact that an attorney submits an insurance claim, without more, does not establish litigation is seriously anticipated and does not,

therefore, constitute protected prelitigation activity. (*Id*. at p. 815.)

In reaching its conclusion, the *Anapol* court reasoned that when a "'contractual claim[ ] for payment'" is submitted "'in the regular course of business,'" the submission of the claim does not show litigation is under serious consideration, but a party would have reason to anticipate litigation at the time of claim submission if "*informal* negotiations" had proved unsuccessful "and the insured ha[d] already decided to bring suit on the policy" or if the insured had "already been informed that its claim [would] be denied," in which case submitting the claim would be equivalent to presenting a demand letter. (*Anapol*, *supra*, 211 Cal.App.4th at p. 827; see also *Mission Beverage Co. v. Pabst Brewing Co., LLC* (2017) 15 Cal.App.5th 686, 704 (*Mission*) [letter triggering mandatory negotiation preceding arbitration was not protected activity because the parties "had 'no reason to believe' that arbitration '[would] follow'" considering they "could well have negotiated a settlement and obviated any need for arbitration"].)

While Rueda's finder's fee claim is not precisely like an insurance claim, the facts here are appropriately analogized to both *Anapol* and *Mission*. In both this case and those cases, the claimed protected activity took place while discussions were at an early stage without any indication informal negotiations would fail. In addition, the prelitigation activity at issue here and in *Anapol* and *Mission* was not accompanied by any threat of litigation, either express or implied, or any other indication litigation was expected to follow. (Compare *Neville*, *supra*, 160 Cal.App.4th at p. 1269 [attorney letter referring to notification of breach and client's intent to "'aggressively pursue . . . all

available remedies'" was protected activity]; *Malin*, *supra*, 217 Cal.App.4th at p. 1293 [attorney letter threatening to file an attached complaint unless the recipient resolved the dispute was protected activity]; *Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467, 1474-1475, 1481 [a landlord's representative's threats to evict a tenant, accompanied by statements that the representative had "'done hundreds of evictions,'" knew the law in the area, had discussed the tenant's case with a judge, and would "'win,'" constituted protected activity]; *Digerati*, *supra*, 194 Cal.App.4th at pp. 887-888 [attorney's statements referring to litigation by client against defendants and against third parties contemplating a business relationship with defendants were protected].)

When Rueda first met with Davidson, he had no reason to know the meeting would be unfruitful. Rueda's self-described "settlement proposal" to Davidson cannot be likened to a demand letter because Rueda did not threaten litigation if his proposal were not accepted, Rueda did not make the proposal under the advice of an attorney in anticipation of litigation, and the parties had not engaged in prior, unsuccessful negotiations that would permit Rueda's proposal to be viewed as a demand.[8] Although

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[8] The complaint's use of the phrase "settlement proposal" cannot be dispositive. First, the complaint's use of that term is not set off by quotes as other words in the complaint are when meant to signify the actual words used by Davidson or Rueda during the meetings. There is therefore good reason to doubt whether waiter and actor Rueda used that precise language. Second, and more fundamentally, it is often the case that "settlement" is a word used to describe the resolution of a dispute that has nothing to do with litigation—as in, for example, when

Davidson apparently became "angry" during the meeting, there is no evidence he threatened Rueda with any legal action or otherwise indicated to Rueda that his only option would be to litigate the matter. To the contrary, Davidson told Rueda he would have to get back to him "'in a few days'" with an answer. Thus, Rueda "had 'no reason to believe'" litigation would ensue considering he "could well have negotiated a settlement" through Davidson without any need to file a lawsuit. (*Mission*, *supra*, 15 Cal.App.5th at p. 704.)

Nor do defendants show that Davidson's "counteroffer" to Rueda was anti-SLAPP protected activity undertaken in anticipation of litigation, whether brought by the parties associated with Davidson or by Rueda. With respect to the parties associated with Davidson, none ever filed or threatened to file an action against Rueda, and none of those parties was represented by Davidson in Rueda's lawsuit. (See *A.F. Brown Electrical Contractor, Inc. v. Rhino Electric Supply, Inc.* (2006) 137 Cal.App.4th 1118, 1128 [defendant's statement it would "'pursue all available legal remedies'" if the plaintiff did not pay defendant what it owed did not show litigation was under serious consideration where plaintiff did not actually file suit].)

The record also does not show Davidson had a reasonable basis for believing Rueda was seriously contemplating litigation. Rueda stated in his declaration that when Davidson asked him what his "'Plan B'" and "'Plan C'" would be if he did not receive what he wanted, Rueda "repeatedly" responded "there was no 'Plan B' or 'Plan C.'" Rueda also indicated that he believed the

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erstwhile friends who grew apart after an argument agree to "settle their differences" and reach a rapprochement.

second meeting would include Roach and Pacquiao for the purpose of discussing fight revenues. Davidson's own declaration does not refute these assertions. In addition, Rueda did not hire an attorney until after his first meeting with Davidson, he did not tell Davidson he had obtained attorney representation, and Rueda's attorney did not participate in the negotiations.[9] (Cf. *Neville*, *supra*, 160 Cal.App.4th at p. 1269 [claim based on statements from attorney]; *Malin*, *supra*, 217 Cal.App.4th at p. 1293 [same]; *Digerati*, *supra*, 194 Cal.App.4th at pp. 887-888 [same].) While Rueda did eventually file a lawsuit with the aid of that same attorney, he did so many months after meeting with Davidson.[10]

One more significant fact that we have not fully discussed remains, however. Davidson's "counteroffer" included a demand that Rueda execute a release, and why, the argument goes, would Davidson seek a legal release if he did not contemplate the possibility of litigation and seek to forestall it? The answer is

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[9] As already described in greater detail, Rueda's retention of an attorney was raised for the first time by Davidson during the trial court's second hearing on defendants' anti-SLAPP motions, and neither defendant asked the court to judicially notice the attorney declaration describing the circumstances of the hiring. Rueda does not challenge defendants' reliance on the declaration in support of their arguments, however.

[10] The *Anapol* court found litigation was not under serious consideration in that case even though the statements at issue were made by attorneys on behalf of their clients. (*Anapol*, *supra*, 211 Cal.App.4th at pp. 830-831.) Thus, the mere existence of attorney representation, without more, does not suffice to show litigation is under serious consideration.

supplied by well-established law that holds the anti-SLAPP statute protects (absent actual ongoing litigation) only those communications that concern litigation that is "under serious consideration." (*Action Apartment*, *supra*, 41 Cal.4th at p. 1251.)

The mere fact that Davidson apparently thought it prudent to secure a release that would prevent Rueda from suing does not mean Davidson must have thought Rueda was seriously considering litigation. Requests or demands for a legal release are, to be sure, often made under circumstances when litigation is in the offing, but not only in those circumstances. Releases are commonly sought by attorneys as a means of protecting against the burdens of litigation even when such litigation is *un*likely or not seriously contemplated. Knowing someone could assert a potential legal claim is not the same as knowing litigation is under serious consideration,[11] and here, where there are at best de minimis objective indicia to suggest Rueda was seriously contemplating litigation at the time of the second meeting with Davidson,[12] we decline to treat Davidson's demand for a release

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[11] For a similar reason, Davidson's statement in his declaration that he met with Rueda "to discuss the basis of his potential claims" does not support a finding that he reasonably believed Rueda was seriously considering litigation. Apart from the fact the declaration includes no factual foundation revealing why Davidson was asked to meet with Rueda, the mere knowledge that someone has a "potential claim" does not show that person is genuinely contemplating a lawsuit. (See *Anapol*, *supra*, 211 Cal.App.4th at p. 827.)

[12] Rueda's subjective intent, as articulated in his declaration, was to the contrary. He declared, "I had never even contemplated litigation until sometime after the second meeting

as dispositive. Statements made under circumstances where litigation is simply a "possibility" are not protected by the anti-SLAPP statute. (*Anapol*, *supra*, 211 Cal.App.4th at p. 828 ["That possibility of litigation in the event of nonperformance is not enough to conclude the claim is made in anticipation of litigation contemplated in good faith and under serious consideration"]; cf. *Edwards v. Centex Real Estate Corp.* (1997) 53 Cal.App.4th 15, 39 [litigation privilege "only arises at the point in time when litigation is no longer a mere possibility, but has instead ripened into a *proposed proceeding* that is actually contemplated in good faith and under serious consideration as a means of obtaining access to the courts for the purpose of resolving the dispute"].)

Pacquiao argues *Blanchard*, *supra*, 123 Cal.App.4th 903 shows prelitigation statements may be protected under the anti-SLAPP statute even under circumstances like those here. *Blanchard*, however, did not eliminate the burden on an anti-SLAPP movant to provide some concrete indication litigation was under serious consideration, regardless of the parties' desire that it never materialize.

In *Blanchard*, defendant DIRECTV sent demand letters to thousands of people the company believed were stealing programming. (*Blanchard*, *supra*, 123 Cal.App.4th at p. 909.) "The letters provided the recipients with an opportunity to resolve the matter by way of settlement before commencement of suit." (*Id.* at p. 910.) Some letter recipients sued DIRECTV and when DIRECTV moved to strike their complaint under the anti-

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with Davidson . . . ." Davidson's two-paragraph declaration says nothing about how likely or unlikely he thought it was that Rueda would pursue litigation.

SLAPP statute, the plaintiffs contended DIRECTV failed to show it was seriously contemplating litigation because it actually filed lawsuits against only a small fraction of the total number of letter recipients. (*Id*. at p. 920.) The *Blanchard* court found the argument unpersuasive, reasoning that by initiating lawsuits against hundreds, if not thousands, of potential violators, DIRECTV showed it seriously contemplated litigation even if it did not actually sue every person it threatened. (*Id*. at pp. 910 & fn. 2, 920.) Here, Davidson and Pacquiao have not shown Rueda insinuated—much less explicitly threatened—he would file a lawsuit if his offer were not accepted. Rueda's personal negotiation of a contractual dispute, in itself, does not show litigation was seriously contemplated at the time. (See *Mission*, *supra*, 15 Cal.App.5th at p. 704.) And Davidson's counteroffer, without more, does not show he had reason to believe Rueda was seriously considering a lawsuit.

Because Pacquiao and Davidson fail to show Rueda's extortion and IIED claims against them arose from protected prelitigation activity, we do not proceed to step two of the anti-SLAPP analysis.

DISPOSITION

The trial court's orders are affirmed. Respondent shall recover his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, Acting P. J.

We concur:

MOOR, J.

JASKOL, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.