

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

RICHARD S. KVASSAY,

Plaintiff and Appellant,

v.

ROBERT V. KVASSAY, as Trustee,
etc.,

Defendant and Respondent.

B284976

(Los Angeles County
Super. Ct. No. BC608172)

APPEAL from a judgment and order of the Superior Court
of Los Angeles County. Allan J. Goodman and Michael J.
Raphael, Judges. Affirmed

Troy A. Stewart for Plaintiff and Appellant.

Law Office of Matthew C. Brown and Matthew C. Brown
for Defendant and Respondent.

Plaintiff and appellant Richard S. Kvassay (plaintiff) appeals from the judgment entered in favor of defendant and respondent Robert V. Kvassay, as Trustee of the Kvassay Family Trust (defendant) after the trial court granted defendant's special motion to strike (Code of Civil Procedure section 425.16¹) plaintiff's causes of action for conversion and declaratory relief in this action concerning the parties' rights to an appeal bond, and awarded attorney fees and costs. We affirm the judgment and the award of attorney fees and costs.

BACKGROUND

The instant case is the fourth appeal plaintiff has filed in an ongoing dispute with defendant over a family trust and the residential property (the property) that was the sole asset of the trust.

Prior eviction order appeal

In a previous action, defendant, as trustee of the trust, obtained an order evicting plaintiff and their brother Peter Kvassay (Peter) from the property. Plaintiff and Peter appealed the eviction order and posted a \$216,000 cash deposit in lieu of bond or undertaking to stay enforcement of the eviction order pending the appeal.

This court affirmed the eviction order in its entirety. (*Kvassay v. Kvassay* (Feb. 3, 2012, B227557) [nonpub. opn.]) The California Supreme Court denied review, and the remittitur was issued on May 9, 2012.

¹ All further statutory references are to the Code of Civil Procedure, unless stated otherwise. A motion brought pursuant to section 425.16 is commonly referred to as an anti-SLAPP motion. SLAPP is an acronym for a strategic lawsuit against public participation.

Plaintiff's bankruptcy

While the appeal from the eviction order was pending, plaintiff filed a voluntary Chapter 11 bankruptcy case that was subsequently converted to a Chapter 7 bankruptcy. Defendant obtained relief from the automatic stay, and on October 19, 2011, the bankruptcy court authorized him to proceed in the state court action to final judgment. The bankruptcy court subsequently authorized the Chapter 7 trustee to abandon all of the estate's right, title, and interest in the \$216,000 cash deposit posted in connection with the eviction action. (*Kvassay v. Kvassay* (May 14, 2014, B246941) [nonpub. opn.])

On September 9, 2013, the bankruptcy court entered a discharge in plaintiff's bankruptcy case.

Prior appeal from order releasing cash deposit

On June 26, 2012, defendant filed a motion to release the cash deposit plaintiff and Peter had posted to stay enforcement of the eviction order. At a September 5, 2012 evidentiary hearing, the probate court found that plaintiff's and Peter's liability on the appeal bond was \$192,660 and ordered the release of funds in that amount from the cash deposit they had posted.

On December 12, 2012, the probate court issued a written order entering judgment against plaintiff and Peter, jointly and severally, in the amount of \$192,660. On January 16, 2013, the probate court issued a written order releasing to defendant \$192,660 of the cash deposit posted by plaintiff and Peter in lieu of an appeal bond. An amended order was issued on June 24, 2013, directing the clerk of the Los Angeles County Superior Court to pay defendant \$192,660 from the cash funds held on deposit in lieu of an appeal bond for plaintiff and Peter. Defendant thereafter took possession of \$192,660 of the \$216,000 deposited by plaintiff with the Los Angeles County Superior Court clerk as a cash deposit in lieu of bond.

In a prior opinion, this court affirmed the order directing the clerk of the Los Angeles Superior Court to pay to plaintiff \$192,660 from the cash deposit posted by plaintiff and Peter in lieu of an appeal bond. (*Kvassay v. Kvassay, supra*, B246941 [nonpub. opn.].) In doing so, we rejected plaintiff's argument that the probate court's judgment against him and Peter was void under Bankruptcy Code section 524. (*Ibid.*) The remittitur was issued on July 14, 2014.

The instant action

Plaintiff alleges that on October 6, 2010, Mary Biason (Biason) transferred \$216,000 to Richard and that Richard deposited the \$216,000 with the clerk of the Los Angeles County Superior Court as a cash deposit in lieu of bond to stay enforcement of the eviction order pending the appeal from that order. Plaintiff further alleges that Biason did not receive notice of defendant's June 2012 motion to release the cash deposit or the September 5, 2012 hearing on the motion. Biason did not appear at the September 5, 2012 hearing and is not named in the judgment fixing liability on the appeal bond. On January 21, 2016, Biason assigned to plaintiff all claims she may have had against defendant concerning the cash deposit.

Plaintiff commenced the instant action on January 25, 2016, for conversion and declaratory relief, claiming that he had a right, as Biason's assignee, to possession of the \$216,000 cash deposit in lieu of bond. Plaintiff also sought a declaration as to whether the judgment against him was discharged in bankruptcy, whether that judgment is void under Bankruptcy Code section 524, and whether defendant had a right to possession of any amount of the cash deposit.

Defendant filed an anti-SLAPP motion and demurrer on the grounds that all of the causes of action asserted in plaintiff's complaint arose from acts in furtherance of defendant's right of

petition and that plaintiff cannot establish a probability of prevailing on his claims. Plaintiff opposed the motion.

At a July 26, 2016 hearing, the trial court granted the anti-SLAPP motion. The trial court subsequently granted defendant's motion for attorney fees under section 425.16, subdivision (c) and awarded defendant \$11,494.50 in attorney fees and \$611 in costs. This appeal followed.

PLAINTIFF'S CONTENTIONS

Plaintiff contends the trial court erred in granting the anti-SLAPP motion as to the conversion cause of action because defendant's conduct in obtaining and enforcing the judgment fixing plaintiff's liability on the appeal bond was not "in connection with a public issue or an issue of public interest" within the meaning of section 425.16, subdivision (e)(4). Plaintiff further contends the trial court erred by applying the anti-SLAPP statute to strike the declaratory relief cause of action. Finally, plaintiff challenges the award of attorney fees and costs to defendant.

DISCUSSION

I. Applicable law and standard of review

Section 425.16, subdivision (b)(1) provides in relevant part: "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 the 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." Subdivision (e) of section 425.16 defines an "act in furtherance of a person's right of petition or free speech under the United States Constitution or California Constitution in connection with a public issue" to include "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” (§ 425.16, subd. (e)(3)), 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)(4).)

Determining whether the statute bars a given cause of action requires a two-step analysis. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88 (*Navellier*).) First, the court must decide whether the party moving to strike a cause of action has made a threshold showing that the cause of action “aris[es] from any act . . . in furtherance of the [moving party’s] right of petition or free speech.” (§ 425.16, subd. (b)(1); *Navellier*, at p. 88.) If the court finds that a defendant has made the requisite threshold showing, the burden then shifts to the plaintiff to demonstrate a “probability that the plaintiff will prevail on the claim.” (§ 425.16, subd. (b)(1); *Navellier*, at p. 88.) In order to demonstrate a probability of prevailing, a party opposing a special motion to strike under section 425.16 ““must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.” [Citation.]” (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 741, fn. omitted.)

A trial court’s order granting a special motion to strike under section 425.16 is reviewed de novo. (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 999.)

II. Protected activity

We reject plaintiff’s contention that the anti-SLAPP statute does not apply to defendant’s conduct in obtaining and enforcing the judgment releasing the cash deposit posted in lieu of an appeal bond because it was not “in connection with a public issue or an issue of public interest” within the meaning of section

425.16, subdivision (e)(4). Plaintiff cites no authority to support his argument that a litigant executing on a judgment acts in his or her personal monetary interest, rather than any “issue of public interest” within the meaning of the anti-SLAPP statute. The law is to the contrary.

Section 425.16 defines an “act of that person in furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue” to include statements or writings made before a judicial proceeding or made in connection with an issue under consideration or review by a judicial body. (§ 425.16, subd. (b)(1).) Statements, writings and pleadings in connection with civil litigation are therefore covered by the anti-SLAPP statute, and the statute does not require any showing that the litigated matter concerns a matter of public interest. (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1115; *Healy v. Tuscan Hills Landscape & Recreation Corp.* (2006) 137 Cal.App.4th 1, 5.) Defendant’s conduct in filing the motion to release the cash deposit posted by plaintiff in lieu of an appeal bond and in obtaining the court order releasing \$192,660 of the deposit to him constituted protected petitioning activity under section 425.16. Defendant’s conduct in receiving the \$192,660 released to him pursuant to the probate court’s order was also protected under the anti-SLAPP statute, which applies to a cause of action arising from a litigant’s efforts to collect a judgment. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1052 [“actions taken to collect a judgment, such as obtaining a writ of execution and levying on a judgment debtor’s property” are protected by the litigation privilege and the anti-SLAPP statute].)

Defendant met the threshold requirement of demonstrating that the causes of action asserted against him arise from activity protected under the anti-SLAPP statute.

III. Probability of prevailing

Because defendant's actions to enforce a judgment were protected activities under the anti-SLAPP statute, we must now determine whether plaintiff met his burden of demonstrating a probability of prevailing on his causes of action. To do so, plaintiff was required to present evidence showing he could establish a prima facie case at trial. (*Evans v. Unkow* (1995) 38 Cal.App.4th 1490, 1496.) He failed to do so.

Plaintiff failed to establish a probability of prevailing on his cause of action for conversion. The conversion claim is premised on plaintiff's rights as an assignee of Biason, the alleged surety who provided plaintiff with the \$216,000 he posted as a cash deposit in lieu of an appeal bond. Plaintiff alleges that Biason was not bound by the judgment enforcing liability on the appeal bond because she was not named in the judgment and received no notice of the motion to release the cash deposit or the hearing on that motion, as required by section 996.440.² Plaintiff presented no evidence, however, to support his claim that Biason qualified as a personal surety on a bond under section 995.510,³ that

² Section 996.440, subdivision (c) requires that notice of a motion to enforce a bond given in an action or proceeding be served on both the principal and surety at least 30 days before the hearing on the motion. (§ 996.440, subd. (c).) Subdivision (d) of that statute states that "[j]udgment shall be entered against the principal and sureties in accordance with the motion" to enforce a bond. (§ 996.440, subd. (d).)

³ The Bond and Undertaking Law requires that personal sureties be sufficient. (*Buzgheia v. Leasco Sierra Grove* (1994) 30 Cal.App.4th 766, 772.) Section 995.510 provides that a personal surety on a bond is sufficient if (1) the surety is a person other than the principal and is not an officer of the court or member of the State Bar; (2) the surety is a resident and either an owner of

Biason was entitled to notice of the bond hearing, or that Biason or plaintiff, as her assignee, had standing to pursue claims based on her status as a surety.

Plaintiff's second cause of action impermissibly seeks declaratory relief with respect to retrospective issues only. Whether the bond judgment was discharged in plaintiff's Chapter 7 bankruptcy proceeding, whether the judgment is void, and whether defendant has a right to any amount of the cash deposited in lieu of the appeal bond are issues that require a determination of past events only. "[T]here is no basis for declaratory relief where only past wrongs are involved. . . ." [Citation.]” (*Osseous Technologies of America, Inc. v. DiscoveryOrtho Partners LLC* (2010) 191 Cal.App.4th 357, 366.)

Whether the bond judgment was void under Bankruptcy Code section 524 is also an issue that was previously adjudicated in the prior appeal in which we affirmed that judgment. (*Kvassay v. Kvassay, supra*, B246941 [nonpub. opn.].) Collateral estoppel bars plaintiff from relitigating that issue here. (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896.)

Plaintiff failed to establish a probability of prevailing on any of his claims. The trial court accordingly did not err in granting the anti-SLAPP motion.

IV. Attorney fees

Plaintiff's sole basis for challenging the award of attorney fees and costs to defendant under section 425.16, subdivision (c) is that the trial court erred in granting the anti-SLAPP motion. Because we affirm the judgment entered upon the trial court's

real property or householder within the state; (3) the surety is worth the amount of the bond in real or personal property, or both, situated in the state, over and above all debts and liabilities, exclusive of property exempt from enforcement of a money judgment. (§ 996.510, subd. (a).)

order granting the anti-SLAPP motion, we also affirm the award of attorney fees and costs.

DISPOSITION

The judgment is affirmed, as is the order awarding defendant his attorney fees and costs. Defendant is awarded his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
ASHMANN-GERST