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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

RAUL DEARMAS, Plaintiff and Appellant v. WONG FLEMING, et al., Defendants and Respondents.	B255448 (Los Angeles County Super. Ct. No. BC515446)

APPEAL from an order of the Superior Court of Los Angeles County, Deidre Hill, Judge. Affirmed.

Franceschi Law Corporation and Ernest J. Franceschi, Jr. for Plaintiff and Appellant.

Wong Fleming and Deborah S. Cochran-Dehkhoda; and Geronimo Perez for Defendants and Respondents.

JP Morgan Chase Bank filed a breach of contract action alleging that Raul Dearmas had failed to repay a business loan. Dearmas denied having entered into the loan, claiming that his signature had been forged on the loan documents. JP Morgan eventually dismissed the case without prejudice. Following the dismissal, Dearmas filed a malicious prosecution complaint alleging that JP Morgan and its attorneys had filed the underlying contract action without probable cause. Defendants filed a motion to strike the complaint pursuant to Code of Civil Procedure section 426.16. The trial court granted the motion, concluding that: (1) Dearmas's sole cause of action arose from protected activity; and (2) Dearmas had failed to make a prima facie showing that he could establish the "favorable termination" element of his malicious prosecution claim. We affirm.

FACTUAL BACKGROUND

In 2011, JP Morgan filed a breach of contract action alleging that its predecessor, Washington Mutual, had extended a business loan to "Fred Segal Beauty," a sole proprietorship owned and operated by Raul Dearmas. The complaint further alleged that Dearmas had executed a personal guarantee on the loan. Fred Segal subsequently defaulted on the loan, which had a principal balance of approximately $40,000. A copy of the loan application and the personal guarantee, both of which appeared to contain Dearmas's signature, were attached to the complaint.

On February 6, 2013, JP Morgan dismissed the action without prejudice. Following the dismissal, Dearmas filed a motion for attorney's fees based on a "prevailing party" provision within the loan documents. Although the trial court found Dearmas was the "prevailing party" within the meaning of Civil Code section 1717, it denied fees based on the fact that JP Morgan had voluntarily dismissed the action. (See Civil Code, § 1717, subd. (b) ["Where an action has been voluntarily dismissed . . . there shall be no prevailing party for purposes of this section"].)

In July of 2013, Dearmas filed a complaint for malicious prosecution asserting that, at the time JP Morgan initiated the underlying breach of contract action, the

company and its attorneys had no "factual evidentiary support" for the claim. According to the complaint, JP Morgan chose to pursue the claim even though it did not have a copy of the loan agreement and had been informed that Dearmas's signature on the guarantee was a forgery. The complaint asserted that JP Morgan's suit was "part of a regular business practice of filing . . . lawsuits against California consumers without having the necessary documentary evidence to support the claims, and with the expectation of obtaining a . . . default judgment or . . . unwarranted settlement." In support, the complaint quoted allegations set forth in a recent pleading the California Attorney General had filed against JP Morgan asserting that the company had engaged in unfair business practices (see Bus. & Prof. Code, § 17200) by "'flood[ing] California courts with collection lawsuits against defaulted credit card borrowers based on patently insufficient evidence.'"

JP Morgan and its attorneys (also named as defendants) filed a motion to strike pursuant to Code of Civil Procedure section 425.16[1] arguing that Dearmas's malicious prosecution claim arose from protected petitioning activity – the filing of the underlying lawsuit. Defendants also argued that Dearmas could not make a prima facie showing on any of the elements necessary to prove his malicious prosecution claim: (1) the lawsuit was terminated in plaintiff's favor; (2) the suit was brought without probable cause; and (3) was initiated with malice. (See *Citi-Wide Preferred Couriers, Inc. v. Golden Eagle Ins. Corp.* (2003) 114 Cal.App.4th 906, 911.) On the first element, defendants argued that Dearmas had produced no evidence that the underlying action had been dismissed based on the merits of the case. On the second element, defendants contended that the loan documents it had attached to the underlying complaint, which included a loan application and a personal guarantee that appeared to have been signed by Dearmas, demonstrated that defendants had probable cause to believe Dearmas was personally

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1 Unless otherwise noted, all further statutory citations are to the Code of Civil Procedure.

liable for the unpaid debt. Defendants argued this same evidence demonstrated the absence of malicious intent.

In response to the motion to strike, Dearmas sought an order permitting discovery he needed to establish a prima facie case of malicious prosecution. (See § 425.16, subd. (g).[2] Dearmas argued that the only way he could prove defendants lacked probable cause to pursue the underlying action and had acted with malice was by deposing JP Morgan's corporate officers and the attorneys who had litigated the suit. During a hearing on the discovery request, Dearmas's counsel clarified that he was not seeking discovery on whether the underlying action had ended in a favorable determination, explaining: "The discovery that we're seeking only goes to . . . . probable cause and the malice. [¶] . . . [¶] The reason we're not seeking discovery on [favorable determination] is because in the underlying action, the trial court made a finding, very specific, to a motion for attorney fees. . . . [T]he court said defendant prevailed and is entitled to costs but not fees. And I believe they're going to be collaterally estopped by that. That was a ruling necessary to a disputed issue before the court that was litigated and is now final. So I believe there is favorable determination." When the court asked plaintiff's counsel whether he was asserting that a "prevailing party determination [wa]s the same things as [a] favorable determination on the merits," counsel responded, "yes," adding "but that's not before the court on this [discovery] motion. That's for the special motion to strike down the road."

The court denied the motion, explaining that Dearmas had failed to demonstrate he had "good cause to believe the specified discovery sought [would] uncover additional facts necessary to establish a prima facie case." According to the court, Dearmas's motion had merely summarized the elements of a malicious prosecution claim without specifying what information "he expect[ed] to . . . elicit[] from the subject discovery."

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[2] Section 425.16, subdivision (g) provides: "All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision."

The court concluded this "[t]he lack of specificity" indicated Dearmas was "fishing for information without showing good cause to believe it exists."

After his discovery request was denied, Dearmas filed an opposition to the motion to strike arguing that defendants' filing of the underlying breach of contract action was not a protected activity within the meaning of section 425.16. Although Dearmas conceded such conduct would normally qualify as protected activity, he argued that his claim was not subject to section 425.16 because the allegations in the complaint demonstrated defendants had filed the underlying complaint for a criminal purpose. Specifically, Dearmas argued that his allegations showed defendants' act of filing the breach of contract action constituted "barratry." (See Penal Code, § 158 [defining "barratry" as "exciting groundless judicial proceedings"].) In support, Dearmas cited to the allegations in the California Attorney General's complaint against JP Morgan asserting that the company had "flooded California courts" with non-meritorious debt collection actions.

Dearmas also argued that even if his malicious prosecution claim was subject to section 425.16, he had demonstrated a probability of prevailing on the merits. On the first element, Dearmas argued that the issue of "favorable determination" was res judicata because the trial court in the underlying action had entered an order declaring that he was the "prevailing party." On the second element, Dearmas argued he had made a prima facie showing that defendants lacked probable cause to pursue its contract claim based on evidence demonstrating that: (1) JP Morgan did not investigate Dearmas's claim that "his purported signature on the application was not his and was a forgery"; and (2) JP Morgan did not have a copy of "the Note . . . upon which the collection action was based."[3] Finally, Dearmas argued that the element of malice was established by JP

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[3] In support of these factual assertions, Dearmas cited to a declaration from his attorney stating that, during the underlying litigation, JP Morgan failed to produce any documentation "manifesting efforts made to determine whether or not the signature on the application or the personal guarantee were those of Raul Dearmas," and also failed to produce "the . . . Note upon which the underlying action was based."

Morgan's lack of probable cause and the allegations in the "California Attorney General's action [against JP Morgan]."

After a hearing, the court granted the motion to strike. Applying the two-pronged test required under section 425.16, the court concluded that Dearmas's malicious prosecution claim arose from "constitutionally protected petitioner activities because the entire [claim] is premised on [d]efendants' filing of the underlying collection action." The court rejected Dearmas's argument regarding "criminality," explaining that while "the SLAPP statue does not protect criminal conduct," Dearmas had failed to make an evidentiary "showing that defendant engaged in the activity known as 'common barratry.'"

On the second prong, the court concluded Dearmas had failed to make a prima facie showing that he could "prove the element of termination in his favor." The court explained that the attorney's fees order in the underlying action was not sufficient to demonstrate a favorable termination, noting that "[t]he analysis for determining a prevailing party [under section 1717] . . . is quite different [than the analysis in] determining the element of favorable termination in a malicious prosecution claim. . . ." The court concluded that because Dearmas had made no showing on the element of favorable determination, it was irrelevant whether he could prove the additional elements of probable cause and malice.

Dearmas appealed the court's order. (See § 425.16, subd. (i) ["An order granting or denying a special motion to strike shall be appealable under Section 904.1"]; § 904.1, subd. (a)(13).)[4]

[4] During the pendency of the appeal, Dearmas reached a settlement with defendant JP Morgan. Accordingly, the only defendants at issue in this appeal are the attorneys who represented JP Morgan in the underlying action.

DISCUSSION

A. Summary of Applicable Law and Standard of Review

"Section 425.16, 'commonly referred to as the anti-SLAPP statute'[5] [citation] is intended 'to provide for the early dismissal of unmeritorious claims filed to interfere with the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.' [Citation.] The section authorizes the filing of a special motion that requires a court to strike claims brought '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 Constitution or the California Constitution in connection with a public issue . . . unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.' (§ 425.16, subd. (b)(1).)

"Section 425.16 '"requires that a court engage in a two-step process when determining whether a defendant's anti-SLAPP motion should be granted."' [Citation.] '"First the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. [Citation.] 'A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause [of action] fits one of the categories spelled out in section 425.16, subdivision (e)' [citation]." [Citation.]. . . [¶] If the defendant makes this showing, the court proceeds to the second step of the anti-SLAPP analysis. [Citation.] In the second step, the court decides whether the plaintiff has demonstrated a reasonable probability of prevailing at trial on the merits of its challenged causes of action. [Citations.]. . . .

"'An appellate court reviews an order granting an anti-SLAPP motion under a de novo standard. [Citation.] In other words, we employ the same two-pronged procedure as the trial court in determining whether the anti-SLAPP motion was properly granted.' [Citation.]" (*Hunter v. CBS Broadcasting, Inc*. (2013) 221 Cal.App.4th 1510, 1519.)

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5 The acronym "SLAPP" stands for "strategic lawsuit against public participation." (*Club Members For An Honest Election v. Sierra Club* (2008) 45 Cal.4th 309, 312.)

B. The Trial Court Did Not Err in Granting Defendants' Motion to Strike

1. Dearmas's malicious prosecution claim arises from protected activity

Under the two-step process applicable to anti-SLAPP motions, we must first determine whether the defendants "made a threshold showing" that Dearmas's claim for malicious prosecution arises from a protected activity. (*Jespersen v. Zubiate–Beauchamp* (2003) 114 Cal.App.4th 624, 630.) Section 425.16, subdivision (e) defines the term "act in furtherance of a person's right of petition or free speech" to include, in relevant part, "any written or oral statement or writing made before a . . . judicial proceeding." (§ 425.16, subd. (e)(1).) Our courts have repeatedly held that, under this definition, a malicious prosecution claim necessarily arises from "protected activity" because "every such claim . . . depends upon written and oral statements in a prior judicial proceeding." (*Daniels v. Robbins* (2010) 182 Cal.App.4th 204, 215; see also *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 734-735 ["by its terms, section 425.16 . . . may apply to every malicious prosecution action, because every such action arises from an underlying lawsuit, or petition to the judicial branch"]; *Pasternack v. McCullough* (2015) 235 Cal.App.4th 1347, 1355 (*Pasternack*) ["A complaint for malicious prosecution is necessarily based on protected speech and petitioning activity"]; *Daniell v. Riverside Partners I, L.P.* (2012) 206 Cal.App.4th 1292, 1298.)

Dearmas does not dispute that malicious prosecution claims are generally subject to section 425.16. He contends, however, that his particular claim is not subject to the anti-SLAPP statute because his complaint includes allegations demonstrating that JP Morgan's act of filing of the underlying action was "illegal as a matter of law," constituting the "the crime of barratry." Dearmas's argument is predicated on a rule set forth in *Flatley v. Mauro* (2006) 39 Cal.4th 299 (*Flatley*), which held that "section 425.16 cannot be invoked by a defendant whose assertedly protected activity is illegal as a matter of law and, for that reason, not protected by constitutional guarantees of free speech and petition." (*Id.* at p. 317.) To demonstrate a defendant's assertedly protected constitutional activity is "illegal and, therefore, outside the ambit of the anti-SLAPP

statute, the illegality must be established as a matter of law either through the defendant's concession or because the illegality is conclusively established by the evidence presented in connection with the motion to strike." (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 286 (*Soukup*).) Thus, to establish the "*Flatley* rule" (*Bergstein v. Stroock & Stroock & Lavan LLP* (2015) 236 Cal.App.4th 793, 806) applies here, Dearmas was required to show either that defendants have conceded that the filing of the breach of contract action constituted barratry or that the evidence submitted in connection with the motion to strike conclusively establishes that barratry was committed.

Dearmas has done neither. First, defendants have consistently denied that their conduct amounted to barratry, which consists of "exciting groundless judicial proceedings" in "three [or more] instances, and with a corrupt or malicious intent to vex and annoy." (Penal Code, §§ 158, 159.) Defendants maintain the underlying action was pursued in good faith and with probable cause. Second, Dearmas submitted no evidence in connection with the section 425.16 motion to strike that conclusively establishes the crime of barratry was committed. The only "evidence" Dearmas cites in support of his claim of barratry are allegations in the California Attorney General's complaint against JP Morgan asserting that the company engaged in unfair business practices by filing thousands of "collections lawsuits against credit card borrowers based on patently insufficient evidence." Allegations in a pleading are not evidence. (See *Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal.App.4th 133, 154.) Because Dearmas has failed to demonstrate that defendants filing of the underlying action was "illegal as a matter of law" (*Flatley, supra,* 39 Cal.4th at p. 317), his malicious prosecution claim "necessarily" falls within the scope of section 425.16. (*Pasternack, supra,* 235 Cal.App.4th at p. 1355.)[6]

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[6] Dearmas also argues that the filing of the underlying breach of contract action was not protected petitioning activity because "defendant JP Morgan [is] a vexatious litigant." Dearmas appears to contend that any complaint filed by a person who has been declared a vexatious litigant necessarily falls outside the scope of section 425.16. Even if we were

2. *Dearmas failed to make a prima facie showing that the underlying litigation terminated in his favor*

Having concluded that Dearmas's claim arises from a protected activity, we next consider whether he demonstrated a probability that he would prevail on his malicious prosecution claim. "To show a probability of prevailing for purposes of section 425.16, a plaintiff must '"'make a prima facie showing of facts which would, if proved at trial'"'" (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1010 (*ComputerXpress*), "'substantiate each element of [his or her] cause of action.'" (*No Doubt v. Activision Publishing, Inc*. (2011) 192 Cal.App.4th 1018, 1028.) "'The plaintiff's showing of facts must consist of evidence that would be admissible at trial.' [Citation]" (*Stewart v. Rolling Stone LLC* (2010) 181 Cal.App.4th 664, 679); "the plaintiff 'cannot simply rely on the allegations in the complaint' [citations]." (*ComputerXpress, supra*, 93 Cal. App.4th at p. 1010.)

The trial court ruled Dearmas had failed to demonstrate a probability of prevailing on the merits because he had offered no evidence that the underlying action had terminated in his favor. The only argument Dearmas presented on the question of favorable termination was that, under principles of res judicata, "[t]he . . . element [was] established by virtue of . . . a judicial determination [in the underlying action] . . . that [Dearmas] was the prevailing party." In support, Dearmas cited an order filed in the underlying contract action stating: "Pursuant to [Civil Code section] 1717, [Dearmas] [wa]s the party prevailing on the contract." The trial court concluded this order did not render the issue of favorable termination res judicata because determining whether a party has prevailed under Civil Code section 1717 does "not [involve] the same analysis [as] determining . . . the element of favorable termination."

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to assume Dearmas is correct on that point of law, he has provided no evidence establishing that JP Morgan has been declared a vexatious litigant. Instead, he simply pronounces that JP Morgan "is a vexatious litigant" and that the "filing and prosecution of the underlying litigation was therefore outside the scope of constitutional protections."

On appeal, Dearmas relies on the same argument and same evidence he presented in the trial court, asserting that "under the collateral estoppel aspect of res judicata," the "prevailing party" order in the underlying breach of contract action "preclude[s]" JP Morgan from "re-litigating" whether the action was terminated in Dearmas's favor. We agree with the trial court that Dearmas has failed to demonstrate collateral estoppel applies here.

Collateral estoppel applies only if "several threshold requirements are fulfilled." (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.) The first of those requirements is that "the issue sought to be precluded from relitigation must be identical to that in the former proceeding." (*Ibid*.) The "'identical issue' requirement addresses whether 'identical factual allegations' are at stake in the two proceedings." (*Id*. at p. 342.) Thus, collateral estoppel applies only if the order declaring Dearmas a "prevailing party" under section 1717 involved the "identical" factual showing necessary to establish that the proceeding terminated favorably for purposes of malicious prosecution.

Whether a party has prevailed on a contract within the meaning of Civil Code section 1717 raises substantially different questions than whether an action has resulted in a favorable termination. "In deciding whether there is a 'party prevailing on the contract [under Civil Code section 1717],' the trial court is to compare the relief awarded on the contract claim or claims with the parties' demands on those same claims and their litigation objectives as disclosed by the pleadings, trial briefs, opening statements, and similar sources. The prevailing party determination is to be made only upon final resolution of the contract claims and only by 'a comparison of the extent to which each party has succeeded and failed to succeed in its contentions.' [Citation.]" (*Hsu v. Abbara* (1995) 9 Cal.4th 863, 876.) "[W]hen the results of the litigation on the contract claims are not mixed -- that is, when the court's decision is purely good news for one party and bad for the other --. . . the trial court has no discretion to deny attorney's fees to the successful litigant. Thus, when a defendant defeats recovery by the plaintiff on the

only contract claim in the action, the defendant is the party prevailing on the contract under section 1717 as a matter of law." (*Id.* at 875-76.)

In contrast, when assessing whether a "'termination of a lawsuit [was] . . . favorable to the malicious prosecution plaintiff," the court must determine whether the termination "'reflect the merits of the action and the plaintiff's innocence of the misconduct alleged in the lawsuit.' [Citation.]" . . . [¶] [A] 'favorable' termination does not occur merely because a party complained against has prevailed in an underlying action. . . . If the termination does not relate to the merits—reflecting on neither innocence of nor responsibility for the alleged misconduct—the termination is not favorable in the sense it would support a subsequent action for malicious prosecution.' [Citation.] Thus, a 'technical or procedural [termination] as distinguished from a substantive termination' is not favorable for purposes of a malicious prosecution claim." (*Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 341-342 (*Casa Herrera*); see also *Robbins v. Blecher* (1997) 52 Cal.App.4th 886, 893 (*Robbins*) [""'The test is whether or not the termination tends to indicate the innocence of the defendant or simply involves technical, procedural or other reasons that are not inconsistent with the defendant's guilt." [Citations.]'"].) Where, as here, the case was terminated through a voluntary dismissal, the court must examine "'[t]he reasons for the dismissal . . . to determine whether the termination reflected on the merits.' [Citations.] A voluntary dismissal on technical grounds, such as lack of jurisdiction, laches, the statute of limitations or prematurity, does not constitute a favorable termination because it does not reflect on the substantive merits of the underlying claim. [Citations.]" (*Robbins, supra,* 52 Cal.App.4th at p. 894.)[7]

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[7] Some cases include language suggesting that "[a] voluntary dismissal is presumed to be a favorable termination on the merits, unless otherwise proved to a jury." (*Sycamore Ridge Apartments LLC v. Naumann* (2007) 157 Cal.App.4th 1385, 1400; see also *Lackner v. LaCroix* (1979) 25 Cal.3d 747, 750-751 ["In some instances the manner of termination reflects . . . . the opinion of the prosecuting party that, if pursued, the action would result in a decision in favor of the defendant, as where . . . the plaintiff in a civil proceeding voluntarily dismisses the action. . . . The reflection arises from the natural assumption that one does not simply abandon a meritorious action once

The authorities above demonstrate that the "prevailing party" inquiry focuses on whether the moving party achieved his or her litigation objectives while the "favorable termination" inquiry focuses on whether the order or other filing that terminated the action "tends to indicate the innocence of the defendant." (*Robbins, supra,* 52 Cal.App.4th at p. 893.) Under these differing standards, "[o]ne may be a prevailing party for attorney fee purposes yet not have obtained a favorable termination for malicious prosecution purposes." (*State of California ex rel. Standard Elevator Co., Inc. v. West Bay Builders, Inc*. (2011) 197 Cal.App.4th 963, 981 [comparing "favorable termination" standard with "prevailing party" standard set forth in Gov. Code, § 12652].) For example, a party who prevailed on a contract claim based on a statute of limitations defense would be the "prevailing party" for purposes of section 1717, but would not have obtained a favorable termination for purposes of a subsequent malicious prosecution action. (Compare *Casa Herrera, supra,* 32 Cal.4th at p. 342 [dismissal on "statute of limitations grounds" is "not favorable for purposes of a malicious prosecution claim"] and *Hsu, supra*, 9 Cal.4th at p. 876 ["when a defendant defeats recovery by the plaintiff on the . . . contract claim . . ., the defendant is the party prevailing on the contract under section 1717 as a matter of law"].)

The prior order determining that Dearmas "prevailed" on the underlying breach of contract claim does not, standing alone, demonstrate that the matter terminated in his favor for purposes of a malicious prosecution claim. Because Dearmas has presented no

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instituted"].) These decisions imply that, when a case is terminated by voluntary dismissal, a rebuttable presumption arises that the dismissal was on the merits, thereby requiring the defendant to introduce evidence that the action was dismissed for reasons unrelated to the merits. Dearmas has never argued that the voluntary nature of JP Morgan's dismissal was sufficient to make a prima facie showing of favorable termination. The argument has therefore been forfeited. (See *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106 ["An appellate court is not required to examine undeveloped claims, nor to make arguments for parties"]; *Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 216, fn. 4 [issue not raised on appeal deemed forfeited or waived]; *Schultz v. Workers' Comp. Appeals Bd.* (2015) 232 Cal.App.4th 1126, 1134 ["issues not raised in the trial court are generally forfeited for purposes of appeal"].)

other evidence or argument on the issue, he has failed to make a prima facie showing on the element of favorable termination.[8]

C. The Trial Court Did Not Abuse its Discretion in Denying Dearmas's Discovery Motion

Dearmas also argues the trial court abused its discretion by "refusing to allow . . . discovery necessary to oppose the anti-SLAPP motion." Under section 425.16, subdivision (g), "discovery is [generally] closed once a motion to strike . . . has been filed. [Citation.] However, the trial court may allow discovery limited to the issues raised by the motion . . . upon 'a timely and proper showing in response to the motion to strike.' [Citation.] The 'proper showing' includes 'good cause' for the requested discovery. [Citation.]" (*Tutor-Saliba Corp. v. Herrera* (2006) 136 Cal.App.4th 604, 617 (*Tutor-Saliba*).) "[C]ase law has interpreted good cause in this context to require a showing that the specified discovery is necessary for the plaintiff to oppose the motion and is tailored to that end." (*Britts v. Superior Court* (2006) 145 Cal.App.4th 1112, 1125.) We review a trial court's order refusing discovery under section 425.16,

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[8] Dearmas's trial court briefing also included a sentence stating that the underlying litigation resulted in a favorable determination because "[JP Morgan] was unable to produce the Note." The statement was unaccompanied by any legal or evidentiary citation. Dearmas's appellate brief includes a similar statement, asserting that "the dismissal was due to [defendants'] inability to produce the note, without which it could not win." Again, Dearmas provides no legal or evidentiary citations in support of this statement and does not explain why "the note" was necessary to prevail on the contract claim. Dearmas's conclusory assertion that the dismissal of the underlying action was due to JP Morgan's inability to produce "the Note" does not constitute a cognizable legal argument. The issue has been forfeited. (See *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700["[w]hen an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary"]; (*People v. Ham* (1970) 7 Cal.App.3d 768, 783 ["Where a point is merely asserted by [appellant] without any [substantive] argument of or authority for its proposition, it is deemed to be without foundation and requires no discussion"] [disapproved on another ground in *People v. Compton* (1971) 6 Cal.3d 55, 60, fn. 3].)

subdivision (g) for an abuse of discretion. (*Tutor-Saliba*, *supra*, 136 Cal.App.4th at p. 617.)

The hearing transcript demonstrates that the trial court did not abuse its discretion in denying the discovery motion. The discovery requests Dearmas submitted in support of his motion sought information related to the element of favorable termination.[9] During the hearing, however, Dearmas's counsel informed the court he only intended to seek discovery on the elements of "probable cause and . . . malice." Counsel explained that he was "not seeking discovery" on favorable termination because he believed the defendant was "going to be collaterally estopped" on that issue based on the "prevailing party" order in the underlying litigation. For the reasons set forth above, the trial court properly rejected that argument, concluding that the "prevailing party" order was not sufficient to demonstrate favorable termination. Because Dearmas's counsel specifically told the court he did not intend to seek any additional evidence of favorable termination through discovery, the court was justified in concluding that any discovery counsel intended to conduct on the other elements of the malicious prosecution claim was unnecessary.

DISPOSITION

Affirmed. Respondents shall recover their costs on appeal.

ZELON, Acting P. J.

We concur:

SEGAL, J. STROBEL, J.*

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[9] Specifically, Dearmas requested that the defendant "produce any and all writings . . . .which [defendant] based its decision to dismiss [the underlying breach of contract action]."

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