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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

LB VILLA PARK, LLC, et al., Plaintiffs and Respondents, v. MARC A. KARLIN et al., Defendants and Appellants.	B232921 (Los Angeles County Super. Ct. No. NC053998)

Appeal from an order of the Superior Court of Los Angeles County, Ross M. Klein, Judge. Affirmed.

Yee & Belilove, Steven R. Yee, Steve R. Belilove and Talar Tavlian for Defendants and Appellants.

Cone & Kassel and John A. Cone, Jr. for Plaintiffs and Respondents.

In 2008, Mark A. Karlin and his law firm, Karlin & Karlin (collectively, Karlin) drafted and filed a complaint in which plaintiff Number One Protection, Inc. (NOP) alleged breach of contract against defendants LB Villa Park, LLC (LB Villa Park) and Gregg R. Kirkpatrick (hereinafter, the underlying lawsuit). The trial court sustained a demurrer to the complaint with leave to amend, and later sustained a demurrer without leave to amend to a first amended complaint.

LB Villa Park and Kirkpatrick subsequently brought suit against NOP and individual defendants (including Henry Alvittes, Maria Concepcion Chavez, Jose Bretado, and Louis Simpson, as well as Doe defendants), alleging fraud, breach of contract, conspiracy, and malicious prosecution, eventually filing a third amended complaint on December 28, 2010. In response, Karlin (as Doe defendants) filed a motion to strike the malicious prosecution cause of action under Code of Civil Procedure section 425.16 (the anti-SLAPP statute). The trial court denied the motion, and Karlin filed a timely appeal.

BACKGROUND

I. The underlying lawsuit in 2008 alleged that LB Villa Park had breached a contract with NOP to provide security services.

In 2006, Simpson owned and operated a mobile home park, Villa Park Mobile Estates, in Long Beach. In May 2007, Simpson sold the property to LB Villa Park.

A complaint filed May 6, 2008 by NOP, represented by Karlin, alleged that LB Villa Park and Kirkpatrick (alleged to be LB Villa Park's alter ego) breached a contract dated June 1, 2006, signed by Simpson, which provided that NOP would provide security services for the mobile home park for a period of six years. A demurrer argued that LB Villa Park was not bound because the contract was between the prior owner Simpson and NOP, and LB Villa Park was not bound merely because it purchased the mobile home park from Simpson. The trial court sustained the demurrer with leave to amend on August 20, 2008.

An amended complaint was filed in September 2008. LB Villa Park again filed a demurrer on the same ground, and the trial court sustained the demurrer without leave to

amend on November 18, 2008. Karlin filed an appeal on NOP's behalf, which the court of appeal later dismissed for default.

II. A lawsuit in 2010 by LB Villa Park against NOP and individual defendants alleged fraud, breach of contract, conspiracy, and malicious prosecution in connection with the underlying lawsuit.

A third amended complaint filed December 26, 2010 by LB Villa Park and Kirkpatrick alleged that NOP and associated individuals (including Simpson) committed fraud, breach of contract, conspiracy, and malicious prosecution connected to the filing of the underlying lawsuit. The complaint alleged that the 2006 contract with NOP was a forgery, and that the defendants were aware Simpson did not enter into the contract (or, in the alternative, that Simpson failed to disclose the contract when he sold the mobile home park to LB Villa Park). The complaint also alleged that the individual defendants conspired to deceive LB Villa Park into accepting and paying for security services for which it was not obligated.

Finally, the complaint's malicious prosecution claim alleged that the defendants acted without probable cause and with malice in bringing the initial lawsuit, as defendants knew, or should have known, that the contract upon which it was based was a falsity and/or a forged document, and that one or more of the legal theories on which the claim was based was groundless.

III. Karlin filed an anti-SLAPP motion, which the trial court denied after a hearing.

Karlin filed a motion to strike the third amended complaint in the malicious prosecution lawsuit, pursuant to Code of Civil Procedure section 425.16,[1] conceding that he was NOP's attorney and had filed the underlying lawsuit.[2] Karlin claimed he acted without malice and with no knowledge of the alleged falsity of the contract, acting in

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[1] Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.

[2] On September 17, 2010, the trial court denied Karlin's motion to strike an earlier version of the complaint.

good faith based on information and authorization provided by Chavez, NOP's president. Karlin's attached declaration stated that he never represented NOP before the initial action, and that he first met with NOP's president Chavez, NOP's general manager Bretado, and account manager Henry Alvittes on April 7, 2008. Karlin's assistant Fatima Reid, fluent in both Spanish and English, acted as a translator for Chavez, who was not fluent in English. At that meeting, Karlin was given the June 1, 2006 contract between NOP and Simpson. He was never told the contract was invalid. Bretado and Alvittes told him that LB Villa Park sought to terminate the contract. When he informed Chavez of her options and asked her whether she wanted to file a lawsuit against LB Villa Park and Kirkpatrick, "Ms. Chavez explicitly and unequivocally responded by saying, "'yes.'" Karlin presented Chavez with an engagement and fee agreement (the agreement),[3] Reid translated it into Spanish, and Chavez signed it and gave Karlin a $2500 check as a retainer. He filed the underlying lawsuit on May 6, 2008, and sent seven invoices to Chavez between August 2008 and February 2010; Chavez wrote him a second check in November 2008. He had no knowledge of the falsity or invalidity of the June 1, 2006 contract, filed the action based on the information provided by Chavez or NOP's representatives, and acted in good faith throughout the conclusion of his representation of NOP. The agreement, invoices, and check were attached. Reid filed a declaration echoing Karlin's account of the April 7, 2008 meeting.

LB Villa's opposition to Karlin's motion argued: "The lawsuit filed by Karlin was based on a contract which all parties to the agreement acknowledge was a fraud." Karlin filed the lawsuit to benefit Bretado, a long-time client, who stood to obtain commissions from NOP by enforcing the contract, and joined Karlin in exploiting the Spanish-speaking Chavez.

Chavez stated in a declaration that she neither spoke nor understood English. Bretado set up the April 7, 2008 meeting with Karlin, telling Chavez that he was upset that NOP had been terminated from providing security services to Villa Park Mobile

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[3] The agreement heading is "RE: Villa Park Mobile Estates."

Estates, an account he had brought to NOP and for which Bretado received commissions as long as NOP provided the services. Bretado told Chavez that he had a long-standing relationship with Karlin and his firm. Chavez responded that she did not want to get involved in litigation, and repeated that at the April 7, 2008 meeting with Karlin. She never provided Karlin with information as a basis for the lawsuit, never authorized Karlin to file the lawsuit, and knew nothing about LB Villa Park or Kirkpatrick. Chavez had never seen the June 2006 contract or the complaint in the underlying lawsuit until her attorney showed it to her in connection with the malicious prosecution action, and NOP was not active or doing business in June 2006. Karlin had told Chavez nothing about the underlying lawsuit.

A declaration by Simpson stated that he never executed the June 2006 contract, and his signature on the contract appeared to be a forgery. Kirkpatrick stated in a declaration that LB Villa Park was formed on May 31, 2006. LB Villa Park had always maintained a separate corporate identity. Neither LB Villa Park nor Kirkpatrick ever was a party to the June 2006 contract, and neither expressly or impliedly assumed the contract.

The opposition also attached portions of Chavez's deposition in December 2010. Chavez testified that NOP had no clients before April 2007, and she had never heard of Simpson. Bretado began work as the manager of NOP in 2007. At the April 7, 2008 meeting, Chavez did not want to sign the agreement, but Bretado told her she had to sign it because she was the owner of the corporation. Karlin told her (according to Reid, who was translating) that the signature was just for that agreement, and she would not get involved in anything. Bretado told Chavez that he had signed the contract with Simpson, but he did not show it to her. Karlin never sent her a copy of the underlying lawsuit, and Chavez never received bills or invoices. She signed the initial retainer check, but she did not authorize a second check made payable to Karlin, which carried her signature stamp. Bretado was the only person authorized to use the signature stamp, which Bretado kept in a safe. When Bretado made out the second check and stamped her signature on it, he was

no longer working for NOP. As far as Chavez knew, NOP never provided security services to LB Villa Park, and NOP contracts never lasted six years.

In reply, Karlin objected to the entirety of Chavez's declaration, based in part on its failure to contain a certification of translation pursuant to Evidence Code section 753. Karlin also raised numerous objections to the other declarations filed with LB Villa Park's opposition.

After a hearing, the trial court denied Karlin's motion to strike, attaching its tentative ruling. The court concluded that the malicious prosecution cause of action arose from protected activity (the underlying lawsuit), and LB Villa Park had demonstrated a probability of prevailing. The court overruled all 63 of Karlin's evidentiary objections. Karlin filed a notice of appeal.

DISCUSSION

"An order denying an anti-SLAPP motion to strike is a proper subject for appeal, pursuant to sections 425.16, subdivision (i) and 904.1." (*Paiva v. Nichols* (2008) 168 Cal.App.4th 1007, 1015.)

"Section 425.16, known as the anti-SLAPP statute, authorizes the early dismissal of SLAPP actions; '"SLAPP" is an acronym for "strategic lawsuit against public participation . . . ."' [Citation.] Section 425.16, subdivision (b)(1) provides: '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 Constitution 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.' The statute provides a method for summary disposition of meritless lawsuits intended '"to chill or punish a party's exercise of constitutional rights to free speech and to petition the government for redress of grievances. [Citation.]"' [Citation.]" (*Antounian v. Louis Vuitton Malletier* (2010) 189 Cal.App.4th 438, 447.) On appeal, we review de novo the trial court's grant of an anti-SLAPP motion to strike, independently reviewing the entire record to determine whether (1) the defendant has met its burden to establish that its action arises from protected

activity, and (2) whether the plaintiff has shown a probability of prevailing on the merits. (*Paiva v. Nichols, supra*, 168 Cal.App.4th at pp. 1016–1017.)

I. The trial court properly denied the SLAPP motion.

The malicious prosecution cause of action alleged that the defendants acted without probable cause and with malice in bringing the underlying lawsuit against LB Villa Park and Kirkpatrick: "Defendants knew, or should have known, that the Agreement on which it was based was a falsity and/or a forged document, and that one or more of the legal theories on which the claim was based was groundless." The parties do not dispute that the underlying lawsuit constitutes protected activity. In LB Villa Park's malicious prosecution cause of action, "[t]he gist of plaintiff ['s] claims is that [Karlin] wrongfully pursued litigation. Litigation is activity protected by the speech and petition clauses. (See *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 734–735, and cases therein cited . . . .) The claims therefore fall squarely within the reach of section 425.16." (*Drummond v.Desmarais* (2009) 176 Cal.App.4th 439, 449.) Karlin argues instead that the trial court erred in determining that LB Villa Park carried its burden to show that the malicious prosecution cause of action had a probability of prevailing on the merits.

In determining whether LB Villa Park demonstrated a probability of success, we employ "a standard similar to that employed in determining . . . summary judgment motions. [Citation.]" (*Paiva v. Nichols, supra*, 168 Cal.App.4th at p. 1017.) LB Villa must demonstrate that it "'state[d] and substantiate[d] a legally sufficient claim.' [Citation.] 'Put another way, the plaintiff "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. La Marche*, *supra*, 31 Cal.4th at p. 741.) We do not weigh the evidence; we "'simply determine[] whether the plaintiff has made a prima facie showing of facts necessary to establish its claim at trial. [Citation.]' [Citation.]" (*Paiva v. Nichols, supra*, 168 Cal.App.4th at p. 1017.)

In order to prevail on its cause of action for malicious prosecution, LB Villa Park was required to "'prove that the underlying action was (1) terminated in [its] favor; (2) prosecuted without probable cause, and (3) initiated with malice.' [Citation.]" (*Antounian v. Louis Vuitton Malletier*, *supra*, 189 Cal.App.4th at p. 448.) The first element is met here; there is no dispute that the sustaining of LB Villa Park's demurrer to the complaint constitutes a termination in LB Villa Park's favor.

As for the second element, whether Karlin prosecuted the underlying action without probable cause, "[t]he presence or absence of probable cause is viewed under an objective standard applied to the facts upon which the defendant acted in prosecuting the prior case. [Citation.] The test of determining probable cause is whether any reasonable attorney would have thought the claim to be tenable. [Citation.]" (*Paiva v. Nichols*, *supra*, 168 Cal.App.4th at p. 1018.)

Simpson's declaration stated that he never executed the June 2006 contract with NOP, and his signature appeared to be a forgery. Chavez stated in her declaration that NOP was not active or doing business in 2006, she knew nothing about LB Villa Park, and she had never seen the June 2006 contract. She also stated that she never authorized Karlin to file the underlying lawsuit or provided any information as a basis for the complaint, and never saw the complaint before preparing for the malicious prosecution claim. Chavez testified at her deposition that NOP had no clients before April 2007, and she had never heard of Simpson. At the meeting with Karlin on April 7, 2008, Chavez signed the engagement letter at Bretado's urging, understanding that "I was not going to get involved in anything." She did not understand what they were talking about, never saw the complaint or received bills or invoices, and did not authorize the second check made payable to Karlin, which was signed with a signature stamp that Bretado kept in a safe. This was ample evidence that the contract was a fraud, and that Karlin was never authorized to file the complaint on NOP's behalf based on the contract.

Further, Kirkpatrick stated in his declaration (as is also clear from the face of the alleged contract) that neither LB Villa Park nor Kirkpatrick were parties to the June 1, 2006 contract, and Kirkpatrick also stated that neither ever expressly or impliedly

assumed the contract.[4] This was evidence that the breach of contract claim against LB Villa Park was not legally tenable, even if the contract were genuine. "Breach of contract cannot be made the basis of an action for damages against defendants who did not execute it and who did nothing to assume its obligations. [Citations.]" (*Gold v. Gibbons* (1960) 178 Cal.App.2d 517, 519; see *Matthau v. Superior Court* (2007) 151 Cal.App.4th 593, 603–604; *Franklin v. USX Corp.* (2001) 87 Cal.App.4th 615, 621.) In the context of determining whether a reasonable lawyer would think a claim tenable for the purpose of a malicious prosecution claim, "[l]awyers are charged with the responsibility of acquiring a reasonable understanding of the law governing the claim to be alleged." (*Franklin Mint Co. v. Manatt, Phelps & Phillips, LLP* (2010) 184 Cal.App.4th 313, 346.)

Crediting as we must the evidence submitted by LB Villa Park, we conclude that LB Villa Park presented prima facie evidence to support its contention that no reasonable attorney would have thought the breach of contract claims in the underlying lawsuit were viable, and that the initial lawsuit therefore was initiated without probable cause.

The third and final element of malicious prosecution is malice, which "'relates to the *subjective intent or purpose* with which the defendant acted in initiating the prior action. [Citation.] The motive of the defendant must have been something other than that of bringing a perceived guilty person to justice or the satisfaction in a civil action of some personal or financial purpose. [Citation.] The plaintiff must plead and prove actual ill will *or* some *improper* ulterior motive.' [Citation.] . . . 'Malice may also be inferred from the facts establishing lack of probable cause.' [Citation.]" (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 292.)

The evidence included Chavez's statements in her declaration that Bretado, who received commissions if NOP provided services to the mobile home park, set up the meeting with Karlin, with whom he had a long-standing relationship. In her deposition, Chavez testified that at the meeting Bretado told Chavez she had to sign the agreement.

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[4] The initial complaint in the underlying action makes no allegation that LB Villa Park or Kirkpatrick assumed the contract; the first amended complaint states only that LB Villa Park and Kirkpatrick were "successors-in-interest."

Chavez also stated that at the meeting, Karlin told her that the signature was just for the agreement, and she would not be involved in any litigation. Chavez testified that Bretado told her he had signed the contract with Simpson, but did not show it to her. Karlin never sent her a copy of the lawsuit, and Chavez never saw bills or invoices. She also testified that Bretado had sole access to the signature stamp that appeared on the second check paid to Karlin. This is prima facie evidence from which a trier of fact could infer an improper motive, that is, that Karlin induced Chavez to sign the agreement and then filed the underlying lawsuit to benefit Bretado, who in turn used the signature stamp to write a check from NOP in payment to Karlin.

In Karlin's declaration submitted with his motion to strike, he provides a version of events in which he had no knowledge that the contract was false and that Chavez authorized him to file the underlying lawsuit at the April 7, 2008 meeting, which was fully interpreted (and all documents were translated) by Reid. These are factual disputes to be litigated at trial, and do not demonstrate that LB Villa Park did not establish a prima facie case of malice. In reviewing an anti-SLAPP motion, the appellate court "'does not weigh credibility or compare the weight of the evidence. Rather, the court's responsibility is to accept as true the evidence favorable to the plaintiff . . . .' [Citation.]" (*Sycamore Ridge Apartments LLC v. Naumann* (2007) 157 Cal.App.4th 1385, 1397.)

II. The trial court's ruling on evidentiary objections did not prejudice Karlin.

Finally, Karlin's brief on appeal states that he "properly objected" to all the declarations in support of LB Villa Park's opposition to the anti-SLAPP motion, adding: "Since these objections are too numerous to cite in this brief, Karlin refers this court to the Appendix," with a bare citation to 26 pages. Karlin suggests: "A careful review of Karlin's objections by this Court will show that the trial court grossly erred in overruling Karlin's numerous proper objections," and without making any argument or citing any authority, states that we must reverse every one of the trial court's 63 evidentiary rulings. We decline this invitation. "'The reviewing court is not required to make an independent, unassisted study of the record in search of error . . . . [E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a

particular point, the court may treat it as waived, and pass it without consideration.' [Citation.]" (*McComber v. Wells* (1999) 72 Cal.App.4th 512, 522.)

Karlin's one specific legal argument challenges the trial court's denial of his objection that Chavez's entire declaration was inadmissible because it was not accompanied by a certification of translation pursuant to Evidence Code section 753, subdivision (a). We review the trial court's ruling for an abuse of discretion; Karlin, as the appellant, has the burden of demonstrating error. (*Dart Industries, Inc. v. Commercial Union Ins. Co.* (2002) 28 Cal.4th 1059, 1078; *Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 631–632.) Absent prejudice, trial court error is not grounds for reversal. (*Taylor v. Varga* (1995) 37 Cal.App.4th 750, 759, fn. 9.)

Evidence Code section 753, subdivision (a) provides: "When the written characters in a writing offered in evidence are incapable of being deciphered or understood directly, a translator who can decipher the characters or understand the language shall be sworn to decipher or translate the writing." Subdivision (b) provides for the appointment of a translator. In his objections in the trial court and at the hearing, Karlin argued that Chavez stated that she did not read nor understand English, and as a result the declaration was completely inadmissible "because it fails to certify that Chavez's declaration was translated into Chavez's primary language." LB Villa Park responded that the declaration had been reviewed by Chavez's attorney and then forwarded to counsel for LB Villa Park, the declaration was not undecipherable, and the substance of the declaration was supported by Chavez's deposition testimony. Karlin replied that Chavez's deposition testimony alone was not evidence of malice or probable cause. The trial court denied the Evidence Code section 753 objections.

Chavez's declaration was submitted in English. Therefore, Evidence Code section 753 does not literally apply, as the provision governs when "the written characters in a writing offered in evidence are incapable of being deciphered or understood correctly," and the appointment of a translator is necessary. Nevertheless, Chavez was not qualified to be a witness if she is "[i]ncapable of expressing . . . herself concerning the matter so as

to be understood, either directly or through interpretation by one who can understand . . . her." (Evid. Code, § 701, subd. (a)(1).) LB Villa Park's case depended on Chavez's inability to speak or understand English. It was incumbent on LB Villa Park to establish that Chavez's English declaration had been related to her in a language that she could understand.

Karlin did not object to Chavez's deposition, which contains testimony similar to her declaration. Absent from the deposition are Chavez's statements in the declaration that Bretado received commissions from the security contract, and that Bretado and Karlin said they had a long-standing relationship with each other, both of which give rise to an inference that Bretado stood to gain if Chavez signed the agreement. Chavez's deposition alone, however, also gives rise to an inference that *Karlin* acted with malice in obtaining Chavez's signature on the agreement, without regard to any possible benefit to Bretado. Chavez testified that Karlin (with his assistant translating) told her that her signature on the agreement would not involve her in litigation. She also testified that Bretado told her to sign, and that the second check to Karlin (of which she had no knowledge) carried her signature stamp, to which only Bretado had access. This is prima facie evidence that Karlin misrepresented to Chavez the nature of the agreement, and later was paid by NOP, without Chavez's knowledge, for litigation which Chavez did not intend to authorize. Even without the statements in the declaration that Bretado and Karlin had a long-standing relationship, Chavez's deposition testimony is evidence that Bretado and Karlin cooperated to obtain Chavez's signature on the agreement and to obtain payments to Karlin. Even if the trial court abused its discretion in allowing the declaration into evidence, no prejudice resulted, as sufficient evidence of Karlin's malice could be found in Chavez's deposition testimony.

DISPOSITION

The order is affirmed. Costs are awarded to respondents.

NOT FOR PUBLICATION.

JOHNSON, J.

We concur:

MALLANO, P. J.

CHANEY, J.