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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CARISSA SANCHEZ et al.,

Plaintiffs and Appellants,

v.

JAMES P. THOMPSON,

Defendant and Respondent.

B279708

(Los Angeles County
Super. Ct. No. BC622709)

APPEAL from orders of the Superior Court of Los Angeles County, Barbara Ann Meiers, Judge. Reversed.

Campbell & Farahani, Frances M. Campbell and Nima Farahani for Plaintiffs and Appellants.

No appearance for Defendant and Respondent.

Plaintiffs Carissa Sanchez and Ramielyn Milo appeal from the trial court's orders granting defendant James Thompson's anti-SLAPP motion and awarding attorney fees under Code of Civil Procedure section 425.16.¹ Because we find plaintiffs demonstrated a reasonable probability of prevailing on their cause of action against Thompson, we reverse the orders.

BACKGROUND

In 2011, plaintiff Sanchez leased a rent-controlled apartment in Santa Monica. The lease provided "Tenant shall not let or sublet all or any part of the premises, nor assign this lease or any interest in it without the prior written consent of Landlord. This is to include any or all roommate changes." In 2014, Sanchez sought and the landlord granted written consent to add plaintiff Milo as a roommate under the lease. Thereafter, Sanchez and Milo (collectively, plaintiffs)² "decided to rent out a room in their [a]partment on AirBnB," as plaintiffs explain in their appellate opening brief. Plaintiffs did not have the landlord's consent to let the room.

3-Day Notices

In early October 2015, after learning plaintiffs were renting out the room on airbnb.com, the landlord and the property

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

² For the sake of consistency, we will refer to Sanchez and Milo as "plaintiffs" throughout this opinion, even during our discussion of the unlawful detainer actions in which they were named as defendants.

management company³ retained attorney James Thompson to pursue eviction proceedings against plaintiffs. On October 8, 2015, Thompson mailed to plaintiffs at an incorrect address a “3-Day Notice to Cease” under section 1806(b) of the Santa Monica Rent Control Charter Amendment (Charter Amendment). Plaintiffs nonetheless received the notice on October 15, 2015.

The October 8, 2015 notice informed plaintiffs their tenancy might be terminated and demanded they cease and remedy (1) the violation of the lease—renting out the room without landlord consent and (2) violations of law—“using the premises for an unlawful activity; Santa Monica Municipal Code, Article 6 which requires a business license for home sharing; and Article 9 which requires that the host also be in the home or rental unit at the same time as the home sharing; and that the City of Santa Monica requires the payment of a ‘Transient Tax’ by the host for home sharing.”

The October 8, 2015 notice further stated: “On October 2, 2015, Property Manager Erin Burch . . . personally observed that a key ‘lock box’ had been installed on the front door of the subject premises. Additionally, Ms. Burch has seen many unauthorized visitors with suit cases [*sic*] entering and exiting the premises. Finally, Ms. Burch has asked the visitors why and how they are entering the unit and has been informed that they have rented the unit on a day/vacation basis from ‘airbnb.com’ & Ms. Burch has located an advertisement on airbnb.com from ‘Ramie’ for vacation rental of the unit.”

³ The landlord (Carol Burch) and the property management company (Miller & Desatnick Management Company) are not parties to this appeal.

According to plaintiffs' declarations submitted with their opposition to Thompson's anti-SLAPP motion, plaintiffs ceased and remedied the violations on October 15, 2015, the date they received the October 8, 2015 3-day notice.

On October 22, 2015, Thompson signed a "3-Day Notice to Terminate" under section 1161, subdivision (4),⁴ which was posted on the door of plaintiffs' apartment. The notice demanded plaintiffs quit and surrender possession of the apartment based on violations of the lease and municipal law.

On October 28, 2015, plaintiffs retained an attorney, who wrote a letter to Thompson and the property manager that same day, explaining that plaintiffs removed the rental listing from airbnb.com and removed the lock-box from the apartment door "as of at least October 15, 2015." The letter further stated, "Tenants have cured any alleged violations of the lease, and understand that they are not to sublease or assign the unit pursuant to paragraph 14 of the lease and Santa Monica Municipal Codes."

Unlawful Detainer Actions

On November 20, 2015, Thompson filed on behalf of the landlord an unlawful detainer action against plaintiffs. He attached to the complaint the October 22, 2015 3-day notice to terminate under section 1161, subdivision (4).

⁴ Section 1161, subdivision (4) provides in pertinent part: "Any tenant . . . using the premises for an unlawful purpose, thereby terminates the lease, and the landlord . . . shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of the demised premises under this chapter."

Plaintiffs, through their attorney, filed a demurrer to the unlawful detainer complaint. They argued the complaint did “not state just cause for eviction” because the 3-day notice to terminate did not provide an opportunity for plaintiffs to cure the alleged breach under section 1806(a)(2) of the Charter Amendment. They further argued the landlord could not evict them for using the premises for an unlawful activity because they had not been “convicted of using or expressly permitting a controlled rental unit to be used for any illegal purpose” within the meaning of section 1806(a)(4) of the Charter Amendment.

Thompson did not file an opposition to the demurrer on behalf of the landlord, but he did appear at the December 31, 2015 hearing to oppose the demurrer. The unlawful detainer court sustained the demurrer with leave to amend. There is no written order in Appellant’s Appendix on appeal, but plaintiffs’ counsel states in her declaration in support of the opposition to Thompson’s anti-SLAPP motion that the unlawful detainer court “specifically advised Mr. Thompson at the hearing that [section 1806(a)(4) of] the Santa Monica Charter Amendment only allowed a landlord to evict a tenant for using a rental unit for an illegal purpose if the tenants had been convicted of using their rental unit for an illegal purpose.”

Thompson did not file a first amended complaint for unlawful detainer on behalf of the landlord. On January 11, 2016, Thompson prepared and signed a new “3-Day Notice to Terminate” under section 1161, subdivision (4), section 1806(a)(4) of the Charter Amendment [use for any illegal purpose], and section 6.20.030 of the Santa Monica Municipal Code [“No host shall undertake, maintain, authorize, aid, facilitate or advertise any vacation rental activity or any home-sharing activity that

does not comply with Section 6.20.020”]. Thompson removed the language about a lease violation based on the argument in the demurrer that the October 22, 2015 3-day notice to terminate was defective because it did not provide an opportunity for plaintiffs to cure the alleged breach under section 1806(a)(2) of the Charter Amendment. On January 22, 2016, Thompson filed on behalf of the landlord a second unlawful detainer action based on the January 11, 2016 3-day notice to terminate. That 3-day notice was served on plaintiffs on January 12, 2016.

Plaintiffs’ attorney prepared a demurrer to the second unlawful detainer complaint. In the demurrer, plaintiffs again argued there was no “just cause for eviction” because they had not been “convicted of using or expressly permitting a rental unit to be used for any illegal purpose” within the meaning of section 1806(a)(4) of the Charter Amendment. Plaintiffs served the demurrer on the landlord, but before they filed it Thompson dismissed the second unlawful detainer action.

On March 22, 2016, Thompson filed on behalf of the landlord a third unlawful detainer action, based on the January 11, 2016, 3-day notice to terminate referenced above which also served as the basis for the second unlawful detainer action. The following day, Milo notified the property management company in writing that she intended to vacate the apartment, explaining: “I am moving because I no longer feel physically or mentally comfortable in the apartment as matters were poorly handled when the owner attempted to evict us twice, which both resulted in dismissals.”

Plaintiffs’ attorney served and filed a demurrer to the third unlawful detainer complaint, making the same argument plaintiffs made in their demurrer to the second unlawful detainer

complaint. Thompson did not file an opposition to the demurrer on behalf of the landlord, but he did appear at the May 5, 2016 hearing to oppose the demurrer. He maintained a conviction was not required before the landlord could evict plaintiffs for renting out the room on airbnb.com. The unlawful detainer court sustained the demurrer with leave to amend. There is no written order in Appellant's Appendix on appeal, but plaintiffs' counsel states in her declaration in support of the opposition to Thompson's anti-SLAPP motion that the unlawful detainer court granted the landlord five days leave to amend to allege that either of the plaintiffs was convicted of using the premises for an illegal purpose.

Thompson did not file a first amended complaint on behalf of the landlord in the third unlawful detainer action. Plaintiffs filed a motion to dismiss the third unlawful detainer complaint, which the unlawful detainer court granted on May 19, 2016.

Plaintiffs' Complaint in the Present Action

On June 9, 2016, plaintiffs filed the complaint in the present action, asserting a cause of action against Thompson for violation of the Santa Monica Tenant Harassment Ordinance.⁵ (Santa Monica Mun. Code, § 4.56.) Plaintiffs included allegations about the multiple 3-day notices Thompson prepared and the three unlawful detainer actions he filed against them (and the disposition of each). Plaintiffs also allege in the complaint that Thompson violated the Tenant Harassment Ordinance in bad

⁵ Plaintiffs also asserted this cause of action against the landlord and further asserted a cause of action against the landlord and the property management company for retaliatory acts in violation of Civil Code section 1942.5, subdivision (c). Plaintiffs settled with these other defendants.

faith by: (1) “Attempting to influence [plaintiffs] to vacate the Apartment through fraud, intimidation or coercion;” (2) “Taking action to terminate [plaintiffs’] tenancy based upon facts which the landlord had no reasonable cause to believe to be true or upon a legal theory which was untenable under the facts known to the landlord”; and (3) “Interfering with [plaintiffs’] use and quiet enjoyment of the Apartment.” Plaintiffs seek compensatory and punitive damages and an injunction prohibiting Thompson from filing additional unlawful detainer actions against plaintiffs “except upon a showing of good cause.”

Anti-SLAPP Motion

Thompson filed an anti-SLAPP motion under section 425.16, asking the trial court to strike plaintiffs’ complaint. He argued, “an attorney acting in his professional capacity, filing an unlawful detainer lawsuit, even multiple lawsuits, is protected activity that satisfied the first prong of the anti-SLAPP analysis.” He also argued plaintiffs cannot demonstrate a probability of prevailing on their cause of action against him because (1) his conduct is protected by the litigation privilege (Civ. Code, § 47, subd. (b)) and (2) the Tenant Harassment Ordinance is preempted by the litigation privilege and also section 1161, subdivision (4), which allows eviction of a tenant based on use of the premises for an unlawful purpose without the tenant having first been convicted of a crime.

Plaintiffs opposed the anti-SLAPP motion, arguing the complaint does not arise from protected activity because Thompson “committed a crime by filing the three [unlawful detainer] actions—thus, the Complaint is not a SLAPP under the ‘illegal as a matter of law’ exception to the anti-SLAPP statute.” They also argued they are likely to prevail on the merits of their

cause of action because Thompson violated the Tenant Harassment Ordinance in bad faith and plaintiffs “obtained favorable termination of all three unlawful detainer actions.”

In connection with his reply brief, Thompson submitted a declaration, stating in pertinent part: “I believe that all of the actions taken in the unlawful detainer matters were legally justified and were done in the zealous advocacy of my client’s legal rights. I still maintain that a conviction of a crime for illegal use is not a requirement for a landlord to exercise her rights under CCP § 1161(4). I believe that the Santa Monica Rent Control law provides conviction of a crime as one of two options for an eviction action. If that was the City Council’s intention – to permit an eviction under 1161(4) ONLY if the City Attorney chooses to prosecute a criminal violation and then chooses to pursue that violation to a conviction – then I believe that the Ordinance is wholly preempted by State Law and is unconstitutional and unenforceable.” In explaining why he stopped filing/pursuing unlawful detainer actions against plaintiffs, Thompson stated: “With Ms. Milo gone and the Court disagreeing with my legal arguments, my client elected not to pursue the case further. I did not oppose dismissal of the action.”

Thompson also submitted a declaration from Vincent Real, an attorney who described himself in his declaration as “one of the leading experts in unlawful detainer law in this region.” Based on his review of the circumstances of the unlawful detainer actions, he opined, “the actions taken by Mr. Thompson were reasonable and taken in the exercise of good judgment on behalf of his client.” He also stated: “I am aware of the potential ambiguity in Code of Civil Procedure § 1161 when it comes to pursuing an eviction based on non-consensual subleasing or

assignment. Both 1161(3) and 1161(4) permit eviction based on subleasing. Under subdivision 3, a cure period may be required. Under subdivision 4, a cure period is not required. There is no unambiguous case law that defines when a sublease violation has to be prosecuted under subdivision 3 as opposed to subdivision 4. I believe it is prosecutorial discretion by a landlord which section he or she chooses to pursue. I find nothing inappropriate about electing to pursue the rights and remedies under subdivision 4 in this instance.” He also stated his belief that the Santa Monica Rent Control law is preempted by state law to the extent it requires a criminal conviction before the landlord may evict a tenant for illegal use of the premises.

The trial court initially denied Thompson’s anti-SLAPP motion on August 25, 2016, but five days later the court vacated its order and scheduled another hearing on the matter. After hearing further argument and allowing additional briefing, the court granted Thompson’s anti-SLAPP motion on October 31, 2016.

Plaintiffs timely appealed on December 23, 2016. On January 19, 2017, the trial court granted Thompson’s motion for attorney fees as the prevailing party on the anti-SLAPP motion.

Thompson did not file a respondent’s brief or otherwise appear on appeal.

DISCUSSION

Plaintiffs contend the trial court erred in granting Thompson’s anti-SLAPP motion and awarding him attorney fees under section 425.16, subdivision (c)(1).

Standard of Review

“Review of an order granting or denying a motion to strike under section 425.16 is de novo.” (*Soukup v. Law Offices of*

Herbert Hafif (2006) 39 Cal.4th 260, 269, fn. 3 (*Soukup*).) “We consider ‘the pleadings, and supporting and opposing affidavits upon which the liability or defense is based.’ (§ 425.16, subd. (b)(2).) However, we neither ‘weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and evaluate the defendant’s evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law.’” (*Ibid.*)

Section 425.16

Under section 425.16, a party may move to dismiss “certain unmeritorious claims that are brought to thwart constitutionally protected speech or petitioning activity.” (*Robinzine v. Vicory* (2006) 143 Cal.App.4th 1416, 1420-1421.) Section 425.16 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 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.” (§ 425.16, subd. (b)(1).)

In evaluating an anti-SLAPP motion, we conduct a two-step analysis. First, we must decide whether the defendant “has made a threshold showing that the challenged cause of action arises from protected activity.” (*Taheri Law Group v. Evans* (2008) 160 Cal.App.4th 482, 488.) For these purposes, 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, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial

body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) 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).)

Second, if the defendant makes this threshold showing, we decide whether the plaintiff “has demonstrated a probability of prevailing on the claim.” (*Taheri Law Group v. Evans, supra*, 160 Cal.App.4th at p. 488.) To satisfy its burden, 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.’” (*Soukup, supra*, 39 Cal.4th at p. 291.) The trial court must deny an anti-SLAPP motion if “‘the plaintiff presents evidence establishing a prima facie case which, if believed by the trier of fact, will result in a judgment for the plaintiff. [Citation.]’” (*Robinzine v. Vicory, supra*, 143 Cal.App.4th at p. 1421.) At this stage of the proceedings, the plaintiff “need only establish that his or her claim has ‘minimal merit.’” (*Soukup, supra*, at p. 291.) Although “‘the court does not *weigh* the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant’s evidence supporting the motion defeats the plaintiff’s attempt to establish evidentiary support for the claim.’” (*Ibid.*)

Analysis

Plaintiffs violated their lease by renting out a room in their apartment on airbnb.com. The landlord and property management company retained Thompson to pursue eviction

proceedings. Thompson prepared and served 3-day notices and filed three unlawful detainer actions.

In his anti-SLAPP motion, Thompson satisfied the first step by making a threshold showing that plaintiffs' cause of action for violation of the Tenant Harassment Ordinance arises from protected activity. "The prosecution of an unlawful detainer action indisputably is protected activity within the meaning of section 425.16.'" (*Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467, 1479.) Service of a 3-day notice also is protected activity because it is "a legally required prerequisite to the filing of the unlawful detainer action." (*Id.* at p. 1480.) Thus, plaintiffs' cause of action, based on Thompson's conduct in serving 3-day notices and filing and prosecuting unlawful detainer actions, arises from protected activity within the meaning of section 425.16, subdivision (e).

Turning to the second step of the anti-SLAPP analysis, Thompson argued in his motion that plaintiffs cannot demonstrate a probability of prevailing on their claim because (1) their cause of action for tenant harassment is barred by the litigation privilege (Civ. Code, § 47, subd. (b))⁶ and (2) the Tenant Harassment Ordinance is preempted by the litigation privilege and the provision regarding eviction proceedings set forth in Civil Code section 1161, subdivision (4) (quoted above in footnote 4). We need not address these arguments because we find plaintiffs' complaint sets forth facts stating a cause of action for malicious prosecution, and plaintiffs have demonstrated a probability of prevailing on that cause of action. Thompson's arguments about

⁶ Under Civil Code section 47, subdivision (b), a "publication or broadcast" made in any judicial proceeding is privileged.

the litigation privilege and preemption are inapplicable to a malicious prosecution claim.⁷

To establish a malicious prosecution cause of action, “a plaintiff must demonstrate ‘that the prior action (1) was commenced by or at the direction of the defendant and was pursued to a legal termination in his [or her], plaintiff’s, favor [citations]; (2) was brought without probable cause [citations]; and (3) was initiated with malice [citations].’” (*Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 871.) An attorney may be held liable on a malicious prosecution cause of action not only for commencing an action without probable cause, but also for “continuing to prosecute a lawsuit discovered to lack probable cause.” (*Zamos v. Stroud* (2004) 32 Cal.4th 958, 960.)

⁷ Both below and in their appellate briefing, plaintiffs asserted they had shown a probability of prevailing on a malicious prosecution cause of action. We note plaintiffs also assert the Tenant Harassment Ordinance, as amended in 2007, incorporates the elements of a malicious prosecution claim and therefore causes of action brought under the ordinance based on the filing of unlawful detainer actions are “no longer barred by the litigation privilege.” (See *Action Apartment Ass’n, Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1249 [“section 4.56.020(i)(1) [before the 2007 amendment] does not require that all three of the conditions of malicious prosecution be met. Favorable termination is not an element of a cause of action under section 4.56.020(i)(1), and we need not address whether a similar ordinance that included this element would be excepted from the litigation privilege”].) A resolution of this issue is not necessary in reaching our conclusions that plaintiffs’ complaint includes allegations stating a cause of action for malicious prosecution and plaintiffs have shown a probability of prevailing on that cause of action.

“‘A termination is favorable when it reflects “the opinion of someone, either the trial court or the prosecuting party, that the action lacked merit or if pursued would result in a decision in favor of the defendant [in this case, Plaintiffs].” ’ [Citation.] ‘It is not enough . . . merely to show that the proceeding was dismissed.’ [Citation.] The termination must demonstrate the innocence of the accused.” (*Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 881.)

“Probable cause is a low threshold designed to protect a litigant’s right to assert arguable legal claims even if the claims are extremely unlikely to succeed. ‘[T]he standard of probable cause to bring a civil suit [is] equivalent to that for determining the frivolousness of an appeal [citation], i.e., probable cause exists if “any reasonable attorney would have thought the claim tenable.” [Citation.] This rather lenient standard for bringing a civil action reflects “the important public policy of avoiding the chilling of novel or debatable legal claims.” [Citation.] Attorneys and litigants . . . “‘have a right to present issues that are arguably correct, even if it is extremely unlikely that they will win. . . .’” [Citations.] Only those actions that “‘any reasonable attorney would agree [are] totally and completely without merit’ ” may form the basis for a malicious prosecution suit. [Citation.]’ ” (*Plumley v. Mockett* (2008) 164 Cal.App.4th 1031, 1047-1048.)

“For purposes of a malicious prosecution tort, malice relates to the subjective intent or purpose with which the defendant acted in initiating the prior action.” (*Padres L.P. v. Henderson* (2003) 114 Cal.App.4th 495, 522.) “[M]alice is present when proceedings are instituted primarily for an improper purpose. Suits with the hallmark of an improper purpose are those in which: ‘ . . . (1) the person initiating them does not believe that

his claim may be held valid; (2) the proceedings are begun primarily because of hostility or ill will; (3) the proceedings are initiated solely for the purpose of depriving the person against whom they are initiated of a beneficial use of his property; (4) the proceedings are initiated for the purpose of forcing a settlement which has no relation to the merits of the claim.” ’ ’ (*Sierra Club Foundation v. Graham* (1999) 72 Cal.App.4th 1135, 1157, quoting *Albertson v. Raboff* (1956) 46 Cal.2d 375, 383.) “Although a lack of probable cause, standing alone, does not support an inference of malice, malice may still be inferred when a party knowingly brings an action without probable cause.” (*Padres L.P. v. Henderson*, *supra*, at p. 522.) Malice also may “be inferred when a party *continues* to prosecute an action after becoming aware that the action lacks probable cause.” (*Daniels v. Robbins* (2010) 182 Cal.App.4th 204, 226.)

In opposing Thompson’s anti-SLAPP motion, plaintiffs made a prima facie showing of the following facts supporting the allegations of malicious prosecution included in the complaint:

Thompson filed three successive unlawful detainer actions against plaintiffs. In the first and third actions, the unlawful detainer court sustained plaintiffs’ demurrers on the merits with leave to amend, ruling that the Santa Monica Charter Amendment only allowed a landlord to evict a tenant for using a rental unit for an illegal purpose if the tenant had been convicted of using the unit for an illegal purpose.⁸ Thompson did not file an amended complaint in the first or third action alleging such a conviction because plaintiffs were not convicted of any offense

⁸ As explained above, Thompson dismissed the second unlawful detainer action after plaintiffs served their demurrer, but before they filed it.

related to the use of their apartment. The third (but not the first or second) action *terminated* when the unlawful detainer court granted plaintiffs' unopposed motion to dismiss the action after the time to amend had expired. (*Desai v. Farmers Ins. Exchange* (1996) 47 Cal.App.4th 1110, 1115 [where a party moves for dismissal of an action after a trial court sustains a demurrer with leave to amend and there is no amendment within the allotted time, "[t]he dismissal operates as a final judgment"].) Thus, plaintiffs have shown a probability of establishing the first element of their malicious prosecution cause of action—that Thompson filed an unlawful detainer action that was pursued to a legal termination in plaintiffs' favor—in that the termination (dismissal) reflected the action lacked merit.

Plaintiffs also have shown a probability of establishing that Thompson lacked probable cause to file the third unlawful detainer action after the court sustained plaintiffs' demurrer in the first action on the merits and Thompson could not cure the defect by amendment. To the extent Thompson believed the court's ruling in the first unlawful detainer action was incorrect, his recourse was to appeal the ruling, not file duplicate unlawful detainer actions against plaintiffs, hoping to achieve a different result for his client.

Plaintiffs also made a *prima facie* showing of malice, sufficient to establish a probability of prevailing on a malicious prosecution claim. A reasonable inference from the evidence is that Thompson filed the third unlawful detainer action knowing it lacked probable cause (after his client's defeat in the first action) to see if plaintiffs would give up and vacate the apartment, as plaintiffs allege in the complaint—i.e., for an improper purpose.

Thompson did not present evidence defeating plaintiffs' prima facie showing of facts supporting a malicious prosecution claim.

Because plaintiffs demonstrated a probability of prevailing on a malicious prosecution cause of action, the trial court erred in granting Thompson's anti-SLAPP motion, and we reverse. Reversal of the order granting the anti-SLAPP motion requires reversal of the order granting Thompson attorney fees under section 425.16, subdivision (c)(1), as he is no longer the prevailing party on the motion.

DISPOSITION

The order granting the anti-SLAPP motion and the order awarding attorney fees are reversed. Appellants are entitled to recover their costs on appeal.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.