Filed 4/10/18 Vilutis v. NRG Solar Alpine LLC CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

GINTARAS VILUTIS, Plaintiff and Appellant, v. NRG SOLAR ALPINE LLC, Defendant and Respondent.	B268092 Los Angeles County Super. Ct. No. MC025304

APPEAL from an order of the Superior Court of Los Angeles County, Randolph A. Rogers, Judge. Affirmed.

Gintaras Vilutis, in pro. per., for Plaintiff and Appellant.

Nossaman, Steven E. Knott and Alexander J. Suarez for Defendant and Respondent.

INTRODUCTION

Plaintiff Gintaras Vilutis (plaintiff) appeals from the trial court's order granting defendant NRG Solar Alpine LLC's (Solar Alpine) special motion to strike his complaint under Code of Civil Procedure section 425.16 (anti-SLAPP statute).[1] Solar Alpine operates an alternating current photovoltaic energy generating facility (solar farm) in Antelope Valley; plaintiff hoped to obtain a contract to sell trees to Solar Alpine for use in its required community remediation efforts. To that end, plaintiff attended a public meeting of the Fairmont Town Council at which Solar Alpine presented its annual report to the community. Plaintiff's claims against Solar Alpine arise from a hostile verbal exchange between plaintiff and another community member that occurred during the course of the meeting. Plaintiff, who represented himself below and continues to represent himself on appeal, contends the exchange was part of a vast conspiracy among the council, its members, Solar Alpine, and others, to deter plaintiff from competing for a tree-selling contract.

Solar Alpine filed a special motion to strike under the anti-SLAPP statute, asserting the remarks made at the council meeting (assuming they could be attributed to Solar Alpine in some way) are entitled to protection under the anti-SLAPP statute because they were made in a public forum in regard to an issue of public interest. It also contended plaintiff could not demonstrate a reasonable probability of success on the merits of his claim for "conspiracy to inflict and infliction of severe emotional and physical distress." The trial court agreed and

---

1 All undesignated statutory references are to the Code of Civil Procedure.

granted the motion, striking the operative complaint in its entirety.

Plaintiff contends the remarks are not protected under the anti-SLAPP statute because they were not made in connection with an issue of public interest. Alternatively, plaintiff asserts the remarks constitute "hate speech" not entitled to First Amendment protection. We disagree because the remarks at issue were made at a public town council meeting—a quintessential public forum. And although the remarks were offensive, they do not fall outside the protection of the First Amendment. We also reject plaintiff's assertion that the court abused its discretion by denying him the ability to conduct discovery because plaintiff did not request a continuance for that purpose either in opposition to the anti-SLAPP motion or at the hearing on the motion.

FACTS AND PROCEDURAL BACKGROUND

1. The Fairmont Town Council Meeting

Solar Alpine operates a solar farm in Antelope Valley under a conditional use permit issued by the County of Los Angeles. One of the provisions of the conditional use permit requires environmental remediation in the form of landscaping in and around the solar farm. By his own account, plaintiff owns "a successful landscaping and tree business" and hoped to obtain a lucrative contract to provide trees to the solar farm.

In compliance with the conditional use permit, Solar Alpine announced it would present its annual community report at the Fairmont Town Council meeting to be held on February 19, 2015 at the Wee Vill Market in Lancaster. Approximately 50 to 60 people attended the meeting.

Ryan Scalise, a senior financial analyst employed by NRG Energy, Inc.,[2] attended the meeting and delivered a presentation on Solar Alpine's project and remediation efforts in the community. As Scalise delivered his presentation, a fracas ensued. Eyewitness accounts of the events that followed were inconsistent. But according to plaintiff, Richard Skaggs interrupted Scalise and asserted that some community benefit funds had been used to assist in the clean-up of hazardous materials following an explosion in the garage of a home owned by a local resident. Maria Santana interrupted Skaggs and asked why the funds were given to "a drug house." After Skaggs explained that the homeowner was not a drug dealer (the actual drug dealers were the 65-year-old tenants who were leasing the garage from the homeowner), plaintiff interjected and said to Santana, " 'unless you have your facts straight, you should not be talking.' " Then, according to plaintiff, Santana turned to him and screamed, " 'You fucking faggot. Get the fuck out of my store!' " When plaintiff refused to leave, Santana continued: " 'Get the fuck out of the store, you faggot, or I am going to call the Sheriff.' "[3]

2. Plaintiff's Complaint

Plaintiff filed a lawsuit naming numerous defendants including Solar Alpine, NRG Energy, Inc., and Santana. Plaintiff also sued the owners of two nurseries that received previous

---

[2] The precise relationship between Solar Alpine and NRG Energy, Inc. is not disclosed by the record on appeal.

[3] Other attendees joined in the kerfuffle and eventually some participants left the meeting and continued the debate outside the market.

contracts to provide trees to the solar farm: Barbara Rogers, president of the Fairmont Town Council, her husband Edward Rogers, Frank Chiodo, and Pat Chiodo.

The operative second amended complaint contains one cause of action styled as "conspiracy to inflict and infliction of severe emotional and physical distress." Essentially, plaintiff alleged the Fairmont Town Council is a sham put in place to facilitate a criminal conspiracy between all the defendants "for the purpose of ensuring that the Energy Companies continued to award all ' tree contracts' to Barbara and Ed Rogers and their 'Crystal Creek Nursery,' and to Pat Chiodo and Frank Chiodo and their nursery, in exchange for the 'rubber stamp' approval by the Fairmont Town Council for any and all 'Environmental Impact Remediation Plans' presented by the Energy Companies for 'approval by the local community.' " Plaintiff further alleged the defendants (those noted above and others not relevant to the appeal) "knowingly and intentionally created circumstances designed to cause me to suffer extreme emotional and physical distress in order to dissuade me from seeking to participate in seeking some of the numerous multi-year multi-million dollar 'tree contracts' that were being awarded by the Energy Companies." In addition, plaintiff alleged all defendants acted as agents of one another and "committed numerous acts and omissions intended to cause me to suffer severe emotional and physical distress and, thereby, sought to eliminate me completely from competing in the 'solar company tree business' including but not limited to the malicious conduct at the Wee Vill Market intended by the Defendants to embarrass me, to humiliate me, to intimidate me, and to completely dissuade me from seeking to participate in the 'solar company tree business.['] "

Plaintiff also asserted Santana's comments were "so outrageous that her conduct and language actually constitute a 'hate crime' under the California Penal Code," sections 422.55, 422.56, and 422.6. Based upon the excerpts of the code sections included in the complaint, we understand plaintiff to allege Santana targeted him due to his actual or perceived sexual orientation.[4]

3. Solar Alpine's Anti-SLAPP Motion

Solar Alpine filed a demurrer and a special motion to strike the complaint under section 425.16.[5] With respect to the anti-SLAPP motion, Solar Alpine argued that even if Santana's statements could somehow be attributed to the company, her statements were plainly an exercise of her right to free speech. More particularly, Solar Alpine explained that the Fairmont Town Council meeting was an "official proceeding authorized by law" within the meaning of the anti-SLAPP statute and Santana's comments were made in connection with a public issue or an issue of public interest.

In support of the anti-SLAPP motion, Solar Alpine submitted declarations from Scalise, Barbara Rogers, Santana, and John Quillen. Scalise, who was giving a presentation at the council meeting, was unaware of the exchange between Santana

---

[4] The complaint does not contain any allegation concerning plaintiff's sexual orientation.

[5] The demurrer and the motion to strike were filed jointly with NRG Energy, Inc. and numerous other defendants joined in the special motion to strike. However, plaintiff's notice of appeal only names Solar Alpine as a respondent and NRG Energy, Inc. has not participated in the appeal.

and plaintiff until after the meeting concluded. Quillen, an eyewitness to the exchange between Santana and plaintiff, stated that plaintiff and Skaggs were the aggressors and were calling Santana "a fat cow and many other obscenities." For her part, Santana denied being an agent of any of the other defendants and denied being party to (or even knowing about) any sort of conspiracy. She also denied ever calling plaintiff "faggot" and stated it was plaintiff and Skaggs who were using that term during the council meeting. Rogers provided some general information about council meeting protocols, but with respect to the incident stated only that "Skaggs and Plaintiff initiated a disturbance at the Town Council Meeting."

4. Plaintiff's Opposition

Plaintiff submitted a lengthy declaration in opposition to the anti-SLAPP motion. Plaintiff reiterated his view that Santana's statements at the council meeting constitute a hate crime under Penal Code sections 422.55, 422.56 and 422.6. And although plaintiff's complaint did not include any allegations regarding Quillen, plaintiff argued Quillen, acting as Santana's "henchman," threatened him at the council meeting, stating " 'Get the fuck out of here, faggot. We know where you live!' " He then argued that Solar Alpine failed to meet its threshold burden on the first prong of the anti-SLAPP analysis because "Santana's 'hate speech' combined with Quillen's 'criminal threat' constitute a 'hate crime' under California Penal Code Section 422 and, ... certainly, have no protection under the First Amendment or the Anti-SLAPP Statute."[6]

---

[6] In his appellate briefing, plaintiff makes no reference to Quillen's remarks, arguing only that Santana's remarks are

5. The Court's Ruling

The special motion to strike came for a hearing before Judge Rogers who was filling in for Judge Yep, the regularly assigned judge. At the outset of the hearing, plaintiff asked for a continuance so that Judge Yep could hear the matter. The request was denied.

The judge indicated he planned to grant the anti-SLAPP motion. During the hearing, plaintiff represented to the court that Mountain Enterprise made a recording of the town council meeting and, although he did not yet have a copy himself, plaintiff assured the court Mountain Enterprise could provide the court with a copy of the recording. But because plaintiff had not obtained a copy of the recording, the court could not consider its content. Plaintiff did not request a continuance in order to obtain a copy of the recording.

The court explained that Santana's statements, while "controversial," were nevertheless protected by the anti-SLAPP statute because they were made during a public meeting and in connection with an issue of public interest. The court also observed plaintiff had not shown a reasonable probability of success on his claim: "So far you have not even come close. None of this makes any sense, and but [*sic*] strange things happen in this world, and had you had the recording, which you insist exists … so that I could, you know, listen to it for myself, you know, I might have a different view, but you don't, and so for today the motion is granted." The court then took the demurrer off calendar as moot. The court's minute order, dated

---

unprotected by the anti-SLAPP statute. Accordingly, plaintiff has forfeited any argument concerning Quillen's conduct.

September 1, 2015, reflected the court's ruling on the anti-SLAPP motion and ordered counsel to prepare a formal written order.

The subsequent written order granted the anti-SLAPP motion, struck the operative complaint in its entirety, and confirmed Solar Alpine was entitled to costs and attorney's fees.

6. The Appeal

The court's order granting the anti-SLAPP motion was entered on September 11, 2015. On October 26, 2015, plaintiff filed a notice of appeal purporting to challenge the order entered "September 1, 2015" regarding the "Motion To Strike Second Amended Complaint Pursuant To California Code of Civil Procedure 425.16."

DISCUSSION

Plaintiff contends the court erred in granting Solar Alpine's anti-SLAPP motion and striking the operative complaint in its entirety. We will affirm the order.

1. Appealability

Although neither party addresses appealability, we do so, as it concerns our jurisdiction. (See *Jennings v. Marralle* (1994) 8 Cal.4th 121, 126 [noting "[a] reviewing court must raise the issue [of appealability] on its own initiative whenever a doubt exists as to whether the trial court has entered a final judgment or other order or judgment made appealable by Code of Civil Procedure section 904.1"].)

As noted, plaintiff's notice of appeal purports to challenge the order granting the anti-SLAPP motion. The notice of appeal specifies the date of entry of the order as September 1, 2015—the date of the hearing. We note, however, that the minute order

directed Solar Alpine to submit a proposed written order. As such, the September 1, 2015 minute order is not appealable. (See *Herrscher v. Herrscher* (1953) 41 Cal.2d 300, 304 ["[W]here findings of fact or a further or formal order is required, an appeal does not lie from a minute order"]; Cal. Rules of Court, rule 8.104(c)(2) ["The entry date of an appealable order that is entered in the minutes is the date it is entered in the permanent minutes. But if the minute order directs that a written order be prepared, the entry date is the date the signed order is filed"]; *Cole v. Patricia A. Meyer & Associates, APC* (2012) 206 Cal.App.4th 1095, 1123, fn. 9.) Instead, the written order signed by the court and filed 10 days later, on September 11, 2015, is the appealable order.

We must construe the notice of appeal liberally, in favor of its sufficiency. (Cal. Rules of Court, rule 8.100(a)(2); *Luz v. Lopes* (1960) 55 Cal.2d 54, 59.) Accordingly, and seeing no prejudice to Solar Alpine, we construe plaintiff's notice of appeal as from the formal order granting the anti-SLAPP motion filed September 11, 2015. (See, e.g., *In re Marriage of Macfarlane & Lang* (1992) 8 Cal.App.4th 247, 253 [construing notice of appeal broadly to include dismissal order where it was readily apparent party sought review of the dismissal, the notice of appeal was timely, and the opposing party was not prejudiced on appeal].)

2. Standard of Review

In an appeal from an order granting or denying a motion to strike under section 425.16, the standard of review is de novo. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.) In considering the pleadings and supporting and opposing declarations, we do not make credibility determinations or compare the weight of the evidence. Instead, we accept the

opposing party's evidence as true and evaluate the moving party's evidence only to determine if it has defeated the opposing party's evidence as a matter of law. (*Ibid*.)

3. Legal Principles Regarding the Anti-SLAPP Statute

"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).)

Our Supreme Court recently clarified the scope of the anti-SLAPP statute: "The anti-SLAPP statute does not insulate defendants from *any* liability for claims arising from the protected rights of petition or speech. It only provides a procedure for weeding out, at an early stage, *meritless* claims arising from protected activity. Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. [Citation.] If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success. [The Supreme Court has] described this second step as a 'summary-judgment-like procedure.' [Citation.] The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law. [Citation.]

'[C]laims with the requisite minimal merit may proceed.' [Citation.]" (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384–385, fn. omitted (*Baral*).)

4. The court properly granted Solar Alpine's anti-SLAPP motion.

4.1. Santana's comments during the Fairmont Town Council meeting are protected under the anti-SLAPP statute.

Section 425.16 provides that an " 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' 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).)

Here, plaintiff alleged Santana made the offending statements during a meeting of the Fairmont Town Council, a community council authorized by the Los Angeles County Board of Supervisors. According to the Council's bylaws, the purpose of the Council includes "serv[ing] as a forum for the free expression of all views, and for the coming together of diverse opinions into a consensus on issues of community concern," as well as

"discuss[ing] issues concerning Fairmont, and to invite participation by public, civic and private organizations." Consistent with the Council's bylaws, the council meeting on February 19, 2015 was held in a public place—the Wee Vill Market in Lancaster. And Solar Alpine, which was to deliver its annual report to the community, sent postcards to members of the community in advance, notifying them of the date, time, and location of the public meeting. The meeting was attended by numerous members of the public. In accordance with the town's charter, any member of the public was welcome to speak at the council meeting. In light of these undisputed facts, we have no difficulty concluding Santana's statements, if made, occurred during "[an] official proceeding authorized by law" (§ 425.16, subd. (e)(1)) and "in a place open to the public or a public forum" (§ 425.16, subd. (e)(3)).

Moreover, the operative complaint makes plain that the offending statements, if made, related to an issue of public interest. Plaintiff alleged Santana made the offending statements in furtherance of a conspiracy to discourage plaintiff from competing for contracts to sell trees to Solar Alpine as part of its community remediation program. According to plaintiff, the award of the coveted tree contracts to nurseries owned by members of the Fairmont Town Council is a byproduct of a corrupt relationship between Solar Alpine and the members of the council. The use of community remediation funds—legitimately or as the product of favoritism—was under discussion at the meeting and is therefore plainly an issue of public interest in the local community.

Plaintiff offers two theories as to why Santana's statements are not protected by the anti-SLAPP statute. First, plaintiff cites

the declaration of Scalise, who was presenting Solar Alpine's annual report when the disruption occurred, and notes that Scalise stated he did not hear Santana exchange words with plaintiff. He then asserts, without citation to any legal authority, "The foregoing begs the question as to how Santana's statements to [plaintiff] were in fact 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, or in connection with an issue of public interest, or yet still 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? Clearly Santana's statements to [plaintiff] were made outside of the scope of Cal Code Civ Proc [*sic*] § 425.16(e)."

It appears plaintiff contends that because Scalise had the floor at the meeting and did not hear Santana's statements, those statements necessarily could not have related to a matter under discussion at the meeting. This assertion is meritless on its face and, as plaintiff fails to provide any legal authority or cogent analysis in support of his position, we pass it without further discussion. (See *Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 556–557 [appellant must demonstrate prejudicial or reversible error based on sufficient legal argument supported by citation to an adequate record]; *Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655–656 [matters not properly raised or that are lacking in adequate legal discussion will be deemed forfeited]; *Kurinij v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 867 ["[A]n appellant must present argument and authorities on each point to which error is asserted or else the issue is waived"].) Moreover, as already explained, plaintiff's

complaint asserts Santana's statements were made in furtherance of a conspiracy to prevent plaintiff from competing for tree contracts—a conspiracy allegedly hatched by the council members and Solar Alpine for their mutual benefit. Such a conspiracy would certainly be an issue of public interest to the small community of Fairmont.

Plaintiff's second argument fares no better. Relying on *D.C. v. R.R.* (2010) 182 Cal.App.4th 1190 (*D.C.*), plaintiff seems to argue that Santana's statements constitute "hate speech" or a "hate crime" and therefore the application of the anti-SLAPP statute to statements like Santana's would discourage victims of hate crimes from pursuing claims against their abusers. Again, plaintiff's argument provides little in the way of analysis. But because *D.C.*, the sole case he relies on, considered whether certain statements constituted "true threats," exempt from protection under the First Amendment, we presume that is his intended contention here.

Although the First Amendment to the United States Constitution protects virtually all types of speech, it does not protect so-called " '[t]rue threats' [which] encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." (*People v. Chandler* (2014) 60 Cal.4th 508, 519 [quoting *Virginia v. Black* (2003) 538 U.S. 343, 358–359]; and see *D.C., supra*, 182 Cal.App.4th at p. 1212 [same].) The state's right to curtail and punish threats of violence without running afoul of the First Amendment has been repeatedly affirmed: " '[A]s speech strays further from the values of persuasion, dialogue and free exchange of ideas the first amendment was designed to protect, and moves toward threats

made with specific intent to perform illegal acts, the state has greater latitude to enact statutes that effectively neutralize verbal expression.' " (*D.C.*, at p. 1212 [quoting *Shackelford v. Shirley* (5th Cir. 1991) 948 F.2d 935, 938].)

In *D.C.*, the sole case relied upon by plaintiff here, the plaintiffs (a high school student and his parents) sued the defendant after he posted derogatory and threatening remarks on a website promoting the student's professional accomplishments. The defendant filed an anti-SLAPP motion, contending the web posting was free speech entitled to protection under the anti-SLAPP statute. The defendant posted the following: " 'Hey [D.C.], I want to rip out your fucking heart and feed it to you. I heard your song while driving my kid to school and from that moment on I've … wanted to kill you. If I ever see you I'm … going to pound your head in with an ice pick. Fuck you, you dick-riding penis lover. I hope you burn in hell." (*D.C., supra*, 182 Cal.App.4th at p. 1219.) On appeal, the court concluded the defendant's speech was not entitled to protection under the anti-SLAPP statute because it constituted a "true threat." (*Id*. at p. 1221.) Critical to the court's holding was the fact that the statements at issue were not merely offensive; they constituted "a serious expression of *an intent to inflict bodily harm*," the hallmark of a "true threat." (*Ibid*., italics added.)

We presume that, by citing *D.C.*, plaintiff believes Santana's speech constitutes a "true threat" not entitled to protection under the anti-SLAPP statute. But as a matter of law, Santana's statements do not constitute a "true threat" because they contain no indication that Santana actually intended to inflict physical harm on plaintiff, or intended to incite others to do so. Nor would a reasonable person conclude, upon hearing

Santana's remarks, that she planned to engage in physical violence. And according to plaintiff, Santana did make an explicit threat to call law enforcement officers. But that threat also does not suggest Santana intended to do violence to plaintiff.

In sum, Solar Alpine met its burden to demonstrate that plaintiff's complaint targets speech protected by the anti-SLAPP statute. Accordingly, we proceed to the second prong of the anti-SLAPP statute.

4.2. Plaintiff has not shown a reasonable probability of success on the merits.

After a defendant establishes the existence of protected activity, "the burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated." (*Baral, supra*, 1 Cal.5th at p. 396.) Accordingly, "without resolving evidentiary conflicts, [we] must determine whether the plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment. If not, the claim is stricken. Allegations of protected activity supporting the stricken claim are eliminated from the complaint, unless they also support a distinct claim on which the plaintiff has shown a probability of prevailing." (*Ibid.*) "The plaintiff's burden on what the Supreme Court has referred to as the 'minimal merit' prong of section 425.16, subdivision (b)(1) (*Navellier v. Sletten* [(2002)] 29 Cal.4th [82,] 95, fn. 11) has been likened to that in opposing a motion for nonsuit or a motion for summary judgment. [Citation.] 'A plaintiff is not required "to *prove* the specified claim to the trial court"; rather, so as to not deprive the plaintiff of a jury trial, the appropriate inquiry is whether the plaintiff has stated and substantiated a legally sufficient claim. [Citation.]' [Citation.]" (*Peregrine Funding,*

Inc. v. Sheppard Mullin Richter & Hampton LLP (2005) 133 Cal.App.4th 658, 675, fn. omitted.)

On appeal, plaintiff does not argue that he asserted a viable claim and presented sufficient evidence to demonstrate a reasonable probability of success on the merits. We assume, therefore, plaintiff recognizes the significant defects in his theory of the case. It also appears he concedes the lack of evidence to support the allegations of the complaint.

On this point, plaintiff asserts only that a recording of the council meeting exists and would corroborate his account of the events that occurred at the Fairmont Town Council meeting. He apparently argues the court abused its discretion by denying him a continuance so that he could conduct discovery.

Generally, discovery is closed once a motion to strike under section 425.16 has been filed. (§ 425.16, subd. (g).) But the court may allow discovery limited to the issues raised by the motion to strike upon "a timely and proper showing in response to the motion to strike." (*Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 37 Cal.App.4th 855, 868; *Tutor-Saliba Corp. v. Herrera* (2006) 136 Cal.App.4th 604, 617.) The "proper showing" includes "good cause" for the requested discovery. (§ 425.16, subd. (g).)

The fatal defect in plaintiff's argument is that he never requested the opportunity to conduct discovery. The record on appeal shows that the issue regarding the recording first arose at the hearing on the anti-SLAPP motion when *the court* inquired whether the meeting had been recorded. At that point, plaintiff represented for the first time that the meeting had been recorded. But he conceded he did not have a copy of the recording. Plaintiff did not request a continuance so that he could attempt to obtain a

copy of the recording. And in his opposition to the anti-SLAPP motion, plaintiff neither represented that a recording existed nor requested the opportunity to obtain a copy of such a recording.

In short, plaintiff's contention that the court abused its discretion is without merit.

DISPOSITION

The order granting Solar Alpine's special motion to strike under section 425.16 is affirmed. Respondent to recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.