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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

VIRTUAL MEDIA GROUP, INC. et al., Plaintiffs and Appellants, v. ROZA CRAWFORD, Defendant and Respondent.	B237817 (Los Angeles County Super. Ct. No. BC459090)

APPEALS from an order of the Superior Court of Los Angeles County. Ramona G. See, Judge. Affirmed.

Russ, August & Kabat, Steven M. Goldberg and Robert F. Gookin for Plaintiffs and Appellants.

Crawford Weinstein and Daniel A. Crawford for Defendant and Respondent.

Plaintiff and Appellant Virtual Media Group, Inc. (Virtual)[1] appeals an order granting an anti-SLAPP motion. (See Code Civ. Proc., § 425.16.)[2] We affirm the order.

FACTS

The current appeal is an outgrowth of fighting over who owns Virtual and who properly controls the company. The fighting has caused multiple rounds of litigation, set forth below to provide context for the current anti-SLAPP motion.

The *Virtual* case

In 1999, the City of Los Angeles (City) cited Regency Outdoor Advertising, Inc. for an unlawful wall sign on a building on South San Pedro Street. Brian Kennedy and Drake Kennedy (hereafter the Kennedy brothers) run Regency. After the City initiated a misdemeanor criminal case charging Regency with the sign violation, Regency filed an action in federal district court challenging the City's outdoor advertising law. In this same time frame, Regency entered into a business arrangement with Virtual, which ostensibly involved a transfer of buildings leases for outdoor advertising held by Regency to Virtual. The move was a litigation tactic in the federal court action to avoid federal abstention. Regency and Virtual then litigated the federal court action together against the City, apparently without a federal abstention problem.

Also in this time frame, Jon Keith Stephens left a position with Regency and took up a position with Virtual. Acting through Stephens, Virtual later began asserting claims against Regency regarding Virtual's rights under the ostensible transfer of leases noted above. Through Stephens, Virtual sued Regency in a lawsuit entitled *Virtual Media Group, Inc. v. Regency Outdoor Advertising, Inc.* (Super. Ct. L.A. County, 2007, No. BC292359; the "*Virtual* case."). The complaint in the *Virtual* case was based on fraud and breach of contract. It alleged that Regency entered into a contract when they transferred the referenced leases and that Regency never intended to honor the contract,

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[1] Our references to Virtual include aligned plaintiffs and appellants Brian Kennedy and Drake Kennedy.

[2] All further section references are to the Code of Civil Procedure unless otherwise specified.

but entered it only to gain an advantage in the federal court action challenging the City's outdoor advertising law.

After a court trial in February 2007, a special verdict was entered in the *Virtual* case, which included findings that "Virtual was created by Regency employees for the benefit of Regency in June or July 1999;" that Regency provided the $75,000 to form Virtual and that the money had never been repaid, and that Regency also "paid the legal bills incurred by Virtual and Regency in the federal case." The court found that the Kennedy brothers were Virtual's "owners," and that Regency had not entered into an enforceable contract with any separately cognizable entity, whether it be Virtual or Stephens.[3] The court noted that Stephens earlier declared under penalty of perjury that he was only the 'leasing manager' for Virtual.

The *Regency* case

In March 2007, Regency and the Kennedy brothers sued Stephens in *Regency Outdoor Advertising, Inc. v. Stephens et al.* (Super. Ct. L.A. County, 2008, No. BC367413, the "*Regency* case."). The record on appeal does not contain a copy of the operative pleading in the *Regency* case. However, other documents in the record indicate that Regency and the Kennedy brothers sought injunctive relief to prevent Virtual, by and through Stephens, from engaging in the outdoor advertising business and, or to enjoin Stephens from operating Virtual.

In October 2008, the trial court in the *Regency* case denied the Kennedy brother's motion for judgment on the pleadings which sought a determination that they owned Virtual based on the earlier findings of fact in the *Virtual* case. The trial judge denied the motion because the *Virtual* case was not then final. The trial court's order reads:

> "[Paragraph] 38 of the SAC contends that the Kennedy brothers (and not Regency) own Virtual. Accordingly, [Virtual and Stephens] are entitled to judgment on the pleadings vis-à-vis Regency. . . .

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[3] Division One of our Court subsequently affirmed the trial court's decision in the *Virtual* case. (*Virtual Media Group, Inc. v. Regency Outdoor Advertising, Inc. et al.* (June 3, 2009, B199008 [nonpub. opn.].)

> "The Kennedy brothers' claim is no more viable, assuming they are in fact plaintiffs on the third cause of action. While the SAC quotes language from Judge Green's February 14, 2007 Findings of Fact and Conclusions of Law, these are on appeal and are not final or binding on this Court. Moreover, the SAC contains allegations which show that the real dispute in the third cause of action is to determine the true owners of Virtual. . . . But the Kennedys do not allege that they are *shareholders* of Virtual.
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> "A California corporation can only be owned by its shareholders and can only act through its duly authorized board of directors. Here, the Kennedys have not alleged sufficient legal standing to seek injunctive relief on behalf of Virtual. Furthermore, the Kennedys have failed to allege that they have complied with Corporations Code [section 800, subdivision (b)(2),] prior to filing this action on behalf of Virtual. Plaintiffs' Opposition fails to analyze these serious issues and instead relies only on Judge Green's findings which are on appeal and the circular argument that the Kennedys are the 'owners of the company.'"

The trial court granted Regency and the Kennedy brothers leave to file a third amended complaint, if they so chose.

The *Stephens* case

In December 2010, Stephens filed a complaint against Regency and the Kennedy brothers, *Stephens et al. v. Kennedy et al.* (Super. Ct. L.A. County, No. BC451413, the "*Stephens* case."). The complaint in the *Stephens* case named Virtual as a defendant, based on allegations that Stephens was the sole shareholder and officer of Virtual, but that the Kennedy brothers had made various representations, and undertaken various actions, purportedly exercising ownership and control over Virtual. Stephens sought to be confirmed as Virtual's sole shareholder, director and officer. In the alternative, if the Kennedy brothers were ruled to be authorized to control Virtual, then Stephens sought to

recover the cash and value of his services that he had contributed to Virtual over a period of years.

Upon filing the complaint in the *Stephens* case, Stephens retained a lawyer, Roza Crawford (the appellant in the current appeal), to represent Virtual.[4] Crawford prepared and filed an answer on Virtual's behalf in the *Stephens* case.

The litigation giving rise to the current appeal

In April 2011, the Kennedy brothers, joined by Virtual, filed a complaint against Stephens and attorney Crawford and her law practice, the Crawford Law Group (CLG).[5] The complaint alleges causes of action labeled "Declaratory Relief," "Abuse of Process," and "Injunction." The allegations involving Crawford and CLG are that Stephens improperly retained Crawford and CLG to represent Virtual in the *Stephens* lawsuit knowing he did not have the authority to do so. Further, that Crawford filed a verified answer to the complaint in the suit and wrongfully admitted all the material allegations.

The complaint further alleges that lawyers for the Kennedy brothers had informed Crawford about the judgment in the *Virtual* case, and had informed Crawford that the Kennedys had not authorized her to represent Virtual in the *Stephens* case. The complaint alleged that Crawford had acknowledged receiving those communications, but refused to heed them.

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[4] In his respondent's brief filed for the appeal before us today, Stephens explains that, because he was asserting that he was the sole officer and director of Virtual, "it fell to him to retain legal counsel to defend the corporation." Further, Stephens says that, if he had allowed Virtual to be defaulted, or had allowed the Kennedys to assume Virtual's defense, then his argument that he was authorized to control Virtual "would have been undermined." At this point, we express no view on Stephens' perspective of the law or litigation tactics; it is enough for us to recognize it is undisputed that Stephens retained attorney Crawford in connection with the *Stephens* case, in Stephens' claimed role as an actual or putative officer of Virtual.

[5] Stephens is not involved in the appeal before us today, and, accordingly, we hereafter disregard him.

On April 18, 2011, Crawford filed an anti-SLAPP motion to strike the complaint. (§ 425.16.)[6] The motion was granted, and Virtual filed a timely notice of appeal. Crawford filed a motion for an award of attorney's fees and costs as the prevailing party, which was granted in the amount of $6,777.

DISCUSSION

I. The Anti-SLAPP Statute

The Legislature enacted the anti-SLAPP statute to address the societal ills caused by meritless lawsuits filed to "chill" the exercise of the "constitutional rights of freedom of speech and petition for the redress of grievances." (§ 425.16, subd. (a).) To this end, the statute established a special procedure for striking chilling and meritless causes of action at an early stage of litigation. The special procedure for striking a cause of action entails two-steps. In the first step, the court's task is to determine whether the moving defendant has made a threshold showing that a challenged cause of action is one "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 . . . ." (§ 425.16, subd. (b)(1).)

An act "in furtherance of [a] person's right of petition or free speech under the United States Constitution or California Constitution in connection with a public issue" includes:

> "(1) any written or oral statement or writing made before a . . . judicial proceeding, . . .
>
> "(2) any written or oral statement or writing made in connection with an issue under consideration or review by a . . . judicial body . . . , or . . .
>
> "(4) any other conduct in furtherance of the exercise of the constitutional right of petition . . . ." (§ 425.16, subd. (e).)

If the court determines the moving defendant has made the required threshold showing that a challenged cause of action "arises from protected activity" as described

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[6] Mr. Stephens filed a separate motion to strike the Complaint against him at the same time.

above, it then falls to the court to move to the second step of the anti-SLAPP statute's special striking procedure. In this second step, the court's task is to determine whether the plaintiff has demonstrated a "probability" that he or she will prevail on his or her claim. (§ 425.16, subd. (b)(1); *Equilon Enterprises v. Consumer Cause, Inc*. (2002) 29 Cal.4th 53, 67; *PrediWave Corp. v. Simpson Thacher & Bartlett LLP* (2009) 179 Cal.App.4th 1204, 1218 (*PrediWave*); *Santa Monica Rent Control Bd. v. Pearl Street, LLC* (2003) 109 Cal.App.4th 1308, 1317.)

An appellate court reviews an order on an anti-SLAPP motion under the de novo standard of review. (*PrediWave*, *supra*, 179 Cal.App.4th at p. 1218.) As a result, we will employ the same two-step procedure as did the trial court in deciding if Crawford's anti-SLAPP motion was properly granted.

II. Virtual's Contentions on Appeal

Virtual contends the order granting attorney Crawford's anti-SLAPP motion must be reversed because the trial court erred in determining that Crawford's conduct underlying Virtual's complaint was entitled to constitutional protection. Not so.

A plaintiff cannot avoid the anti-SLAPP statute by attempting, through artifices of pleading, to characterize a cause of action as a garden variety tort or contract claim when in fact the claim is predicated on protected speech or petitioning activity. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 90-92.) In other words, a court that is presented with an anti-SLAPP motion is not precluded from applying the statute merely because of the label a plaintiff attaches to a cause of action. Instead, a court must "examine the *principal thrust* or *gravamen* of a plaintiff's cause of action to determine whether the anti-SLAPP statute applies. . . ." (*Ramona Unified School Dist. v. Tsiknas* (2005) 135 Cal.App.4th 510, 519-522.) The gravamen of a cause of action is the allegedly wrongful conduct that is the foundation for the cause of action. (*Martinez v. Metabolife Internat., Inc*. (2003) 113 Cal.App.4th 181, 189.)

Here, it cannot be questioned that Virtual sued Crawford because she acted in the role of an attorney for a party in a judicial proceeding. Indeed, Virtual's first cause of action for declaratory relief expressly seeks a judgment declaring that Crawford is "not

authorized to represent Virtual in the pending litigation." Its second cause of action for abuse of process alleges that Crawford, working with Stephens, caused an answer to be filed in an effort "to gain an advantage" in the *Stephens* litigation. These allegations end Virtual's argument that the anti-SLAPP statute does not apply in the first instance. Except where undisputedly illegal conduct is involved, conduct connected to litigation falls within the protective reach of the anti-SLAPP statute. (See *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1116-1119; *Flatley v. Mauro* (2006) 39 Cal.4th 299, 321-325; *Healy v. Tuscany Hills Landscape & Recreation Corp*. (2006) 137 Cal.App.4th 1, 5-6; *Rohde v. Wolf* (2007) 154 Cal.App.4th 28, 35-37; *Haight Ashbury Free Clinics, Inc. v. Happening House Ventures* (2010) 184 Cal.App.4th 1539, 1548-1549.)

This brings us to the second step of the anti-SLAPP procedure. Virtual contends the trial court's order granting Crawford's anti-SLAPP motion must be reversed because Virtual presented evidence showing a probability that it will prevail on its claims. Again, Virtual is wrong.

Virtual's allegations against Crawford consist entirely of representing a client and filing pleadings in the course of litigation. Such conduct, even if it were "fraudulent" in the sense that Crawford was not authorized to act as Virtual's attorney, cannot be a basis for liability because it is absolutely protected by the litigation privilege set forth in Civil Code section 47, subdivision (b). (See *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056.) No more needs to be said.

Denying Virtual the special procedural remedy afforded under the anti-SLAPP statute does not mean that Virtual is left with no remedy against an attorney such as Crawford, who allegedly did wrong in representing Virtual without proper authority. One obvious remedy is one that Virtual has already exercised, namely, a motion to strike the answer that Crawford filed on Virtual's behalf. Virtual also could possibly have moved to disqualify Crawford as Virtual's attorney of record. What Virtual could not do is file a separate lawsuit against Crawford for alleged abuse of process based on her litigation-related activities. Such a lawsuit is just the type of chilling lawsuit — a lawsuit

intended to chill petitioning activity — at which the anti-SLAPP statute is aimed, particularly in a context where the litigation giving rise to the abuse of process claim is still ongoing.

DISPOSITION

The order is affirmed. Respondent to recover costs on appeal.

BIGELOW, P. J.

We concur:

FLIER, J.

GRIMES, J.