Filed 10/2/18 Finato v. Fink CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CLAUDIA FINATO, Plaintiff and Appellant, v. KEITH A. FINK et al., Defendants and Appellants.	B281357 (Los Angeles County Super. Ct. No. SC126362)

APPEAL from an order of the Superior Court of Los Angeles, Lisa Hart Cole, Judge. Affirmed as modified.

Law Offices of Larry R. Glazer and Nicolette Glazer for Plaintiff and Appellant.

Law Offices of Oliver J. Vasquez, Oliver J. Vasquez; Law Offices of Olaf J. Muller and Olaf J. Muller for Defendants and Appellants.

Defendants Keith A. Fink & Associates (KAF&A), Keith A. Fink, and Sarah Hernandez (collectively, defendants) appeal from the trial court's order granting in part and denying in part defendants' special motion to strike under Code of Civil Procedure section 425.16,[1] the anti-SLAPP (Strategic Lawsuit Against Public Participation) statute. Plaintiff Claudia Finato (plaintiff) cross-appeals.

Defendants represented plaintiff in a class action against her former employer, but allegedly abandoned plaintiff in favor of another class representative and entered into an unfavorable settlement without plaintiff's authorization. Plaintiff hired new counsel, opted out of the class settlement, and eventually reached a new settlement with her former employer. Defendants then filed a notice of lien on plaintiff's recovery, which allegedly led to the former employer refusing to disburse the settlement funds to plaintiff. Plaintiff sued defendants for malpractice, breach of fiduciary duty, breach of contract, restitution, intentional interference with contractual relations and prospective economic advantage, and declaratory relief.

Defendants brought an anti-SLAPP motion, arguing that plaintiff's claims targeted defendants' protected right to petition the courts. The trial court granted the motion to strike the two intentional interference counts, finding they were based on defendants' filing of the notice of lien. The trial court denied the motion as to the other causes of action, finding that the malpractice and fiduciary duty claims were exempt from section

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[1] Further unspecified statutory references are to the Code of Civil Procedure.

425.16, and that the gravamen of the remaining claims did not implicate conduct protected by the anti-SLAPP statute.

We hold that the trial court correctly struck the two intentional interference causes of action. Plaintiff does not dispute that filing a notice of lien is protected activity, and her arguments that her causes of action do not arise from that filing are belied by the allegations in the complaint. Plaintiff has also failed to provide evidence establishing a probability of success on those claims.

We further hold that the trial court erred in not striking those allegations in plaintiff's causes of action for malpractice, breach of fiduciary duty, and breach of contract pertaining to defendants' filing the notice of lien. We thus modify the trial court's order to strike the lien-related claims and allegations from those three causes of action. As modified, we affirm the trial court's order.

BACKGROUND

1. The Complaint

a. Factual allegations

Plaintiff filed her complaint on September 6, 2016, alleging the following:

In March 2011, plaintiff retained KAF&A, a law firm, to represent her in litigation against her employer, LABite.com, a food delivery company. Defendants Fink and Hernandez were attorneys at KAF&A. Plaintiff signed a contingency fee agreement entitling KAF&A to 50 percent of "any amount recovered by settlement, judgment, award or otherwise." The agreement stated that if plaintiff terminated KAF&A, the law firm "shall have the right to recover from any settlement,

judgment or other recovery, after it is obtained by [plaintiff], compensation for the reasonable value of [KAF&A's] services and unreimbursed actual costs and expenses advanced by [KAF&A]."

In September 2011 KAF&A filed a class action complaint on behalf of plaintiff and a class of similarly situated individuals asserting claims against LABite[2] for wrongful termination and violations of numerous sections of the Labor and Business and Professions Codes. KAF&A consolidated plaintiff's case with that of another client, Joaquim Finato.[3] The trial court later related two other actions against LABite to the consolidated Finato cases for purposes of discovery and class certification. The trial court certified a class in May 2013 with plaintiff, Joaquim Finato, and one of the plaintiffs in the related cases, Gilberto Romagnolo, as class representatives, and KAF&A and Romagnolo's attorneys as class cocounsel.

After the trial court certified the class, plaintiff's relationship with KAF&A deteriorated and the firm stopped communicating with plaintiff or keeping her apprised of developments in the case. In February 2014 KAF&A and Romagnolo's counsel reached a settlement agreement with LABite without consulting with plaintiff or any member of the class. When plaintiff reviewed the settlement agreement in April 2014, she believed it was "unauthorized, grossly inadequate, and prejudicial to the interests of Plaintiff and the absent class members," and told KAF&A the settlement terms

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[2] Honig Enterprises Inc. was also a defendant. For purposes of this appeal we refer to LABite.com and Honig Enterprises collectively as LABite.

[3] Defendants state in their appellate brief that Joaquim Finato is plaintiff's husband.

were unacceptable. In late April 2014 plaintiff terminated KAF&A and retained new counsel.

KAF&A then recruited another class member, Tim Baker, who was willing to sign the settlement agreement. KAF&A and class cocounsel filed an amended class complaint naming Baker as sole plaintiff and simultaneously moved for preliminary approval of the settlement. Plaintiff formally opted out of the class settlement to preserve her individual claims. The trial court entered judgment and an order of final approval of the settlement in October 2014, awarding $420,000 in fees to class counsel, $210,000 of which went to KAF&A.

On July 1, 2015, plaintiff and LABite agreed to settle plaintiff's individual claims. In the written settlement agreement, plaintiff and her new counsel represented and warranted that no one other than plaintiff's new counsel was entitled to attorney fees arising out of the agreement. The parties fulfilled all conditions precedent to the agreement on or about September 5, 2015, with disbursement of funds due by September 30, 2015.

On September 8, 2015, KAF&A "asserted a lien for attorney fees" in the litigation between plaintiff and LABite " 'pursuant to the parties [sic] written contract to pay attorneys' fees.' " Plaintiff filed an "unopposed motion" to enforce the settlement agreement, which the trial court denied. Plaintiff alleged that as of the filing of her complaint, KAF&A had taken no action to perfect or enforce its purported lien, and LABite had not disbursed any settlement proceeds to plaintiff or her new counsel.

b. Causes of action

Plaintiff asserted seven causes of action against defendants for malpractice, breach of fiduciary duty, breach of contract,

restitution, intentional interference with contractual relations, intentional interference with prospective economic advantage,[4] and declaratory relief. Plaintiff alleged numerous acts she claimed violated defendants' duties to her, including negotiating and executing the class settlement without her consent, abandoning plaintiff's case and substituting Baker as class representative, and asserting a lien to which defendants were not entitled, thus undermining and invalidating plaintiff's settlement agreement with LABite. In support of the intentional interference claims, plaintiff alleged that defendants asserted their lien in order to disrupt and prevent performance of her settlement agreement with LABite.[5]

Plaintiff sought, among other things, damages, disgorgement of unearned legal fees and costs, and a declaration that defendants were not entitled to further compensation from her.

2. Defendants' Special Motion to Strike

Defendants filed a special motion to strike under section 425.16. Defendants argued that all of their alleged wrongful conduct took place before or in connection with pending judicial proceedings and was therefore protected by the anti-SLAPP statute. Defendants contended that plaintiff could not show a

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[4] The complaint refers to the sixth cause of action alternatively as intentional interference with prospective economic *advantage* and with prospective economic *relations*. Any distinction is immaterial to this appeal, and we use the terms interchangeably.

[5] We describe the causes of action more fully in the Discussion section, *post*.

probability of success on her causes of action because of, among other things, the litigation privilege, the statute of limitations, res judicata, and failure to state a claim upon which relief could be granted. Defendants further asserted that plaintiff's causes of action for breach of contract and declaratory relief failed as to Fink and Hernandez because they were not parties to the contingency fee agreement with plaintiff. Defendants also filed a demurrer to all causes of action.

In support of the motion to strike and demurrer, defendants filed a request for judicial notice of numerous documents from the litigation between plaintiff and LABite. These included plaintiff's ex parte application for an order directing disbursement of the settlement proceeds, which attached as an exhibit defendants' "Notice of Attorneys' Fees Lien" (boldface and some capitalization omitted), dated September 8, 2015. Defendants also requested judicial notice of their opposition to plaintiff's motion to enforce the settlement, and the trial court's order denying the motion.

Plaintiff opposed the motion to strike. Plaintiff argued that her causes of action did not seek to impose liability based on defendants' exercise of their constitutional rights, that defendants had failed to identify any allegations of conduct protected by section 425.16, that to the extent defendants' conduct amounted to speech it was commercial speech that could not overcome plaintiff's own constitutional right to petition the court, and that attorney malpractice claims were not subject to section 425.16. Plaintiff challenged the constitutionality of section 425.16 as overbroad and vague. Plaintiff further contended that even if defendants' conduct fell within the protections of section 425.16, she had met her burden of

establishing a probability of success, and defendants' arguments based on the litigation privilege, statute of limitations, and res judicata were without merit. In support of her opposition plaintiff filed a declaration from her attorney attaching numerous exhibits mostly pertaining to the prior litigation against LABite. Plaintiff also opposed the demurrer.

3. The Trial Court's Ruling

After a hearing, the trial court denied the motion to strike the causes of action for malpractice, breach of fiduciary duty, breach of contract, restitution, and declaratory relief. The court cited cases holding that section 425.16 does not apply to causes of action against attorneys for malpractice and breach of fiduciary duty. The trial court ruled that the gravamen of the claims for breach of contract, restitution, and declaratory relief did not involve conduct protected under section 425.16 because "mere assertion of a right to payment is not in itself protected conduct" and "[t]here is no allegation that a notice of lien was filed" in the earlier action between plaintiff and LABite. The trial court found that "[t]he declaratory relief claim simply seeks a declaration as to whether Defendant is entitled to any further recovery of fees. The breach of contract claim is based on the representation of Plaintiff in the prior proceeding and the assertion of an attorney lien is only wrongful because Plaintiff claims there is no underlying debt to support it. As such, protected conduct is not the gravamen of these causes of action." The attorney lien was "either incidental or merely evidence of the dispute" underlying the contract, restitution, and declaratory causes of action.

The trial court granted the motion to strike the two intentional interference causes of action. The trial court found those causes of action were "based entirely on the assertion of an

attorney's lien in the prior action." The trial court ruled that the filing of a notice of lien was "a filing with a judicial body regarding an issue before it, i.e. disposition of settlement proceeds," and thus qualified as protected conduct under section 425.16, subdivision (e)(1).

The trial court further ruled plaintiff had not made a sufficient evidentiary showing in support of the intentional interference causes of action. The trial court found "no evidence that Defendant ever asserted the attorney's lien in the prior action by filing a notice of lien. Plaintiff did not submit the supposed notice of attorney lien filed on 9/8/15 in the prior action."[6] Further, the court found "no evidence that Defendant asserted [its] lien for the purpose of disrupting Plaintiff's settlement agreement"—plaintiff's evidence suggesting the fee request was baseless was "circumstantial" and the court declined to infer an intent to disrupt from defendants' failure to take further steps to enforce its lien beyond asserting it. Finally, the trial court found "no evidence as to actual interference with the settlement" because plaintiff's counsel's declaration was "silent as to what transpired" after defendants asserted their lien. Thus, the court concluded, plaintiff had "fail[ed] to submit evidence establishing the elements of intent to disrupt, the actual act that interfered and actual disruption."

The trial court sustained the demurrer to the cause of action for restitution but otherwise overruled the demurrer.

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[6] The trial court was correct that plaintiff did not submit the notice of lien in support of her intentional interference claims. It does not appear from the record that the parties called the trial court's attention to the notice of lien included among the attachments to defendants' request for judicial notice.

Defendants appealed from the order partially denying their special motion to strike. Plaintiff cross-appealed, challenging the order striking her two causes of action for intentional interference.

DISCUSSION

Under 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).) As relevant to this case, acts protected under the statute include "any written or oral statement or writing made before a . . . judicial proceeding" and "any written or oral statement or writing made in connection with an issue under consideration or review by a . . . judicial body." (§ 425.16, subd. (e)(1), (2).)

"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." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384 (*Baral*).) In evaluating the plaintiff's probability of success, "[t]he 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." (*Id.* at pp. 384–385.)

An anti-SLAPP motion need not be directed at a cause of action in its entirety, but "may be used to attack parts of a count as pleaded." (*Baral*, *supra*, 1 Cal.5th at p. 393.) Thus, when a cause of action is supported by allegations of both protected and unprotected activity, the anti-SLAPP statute applies to the former but does not reach the latter. (*Id.* at p. 382.) "[C]ourts may rule on plaintiffs' specific claims of protected activity," regardless of how they are framed or grouped in the pleading. (*Id.* at p. 393; see *Sheley v. Harrop* (2017) 9 Cal.App.5th 1147, 1164–1165.) However, assertions of protected activity that are " 'merely incidental' or 'collateral' are not subject to section 425.16." (*Baral*, at p. 394.) "Allegations of protected activity that merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute." (*Ibid.*)

We review the grant or denial of an anti-SLAPP motion de novo. (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1067.) "We exercise independent judgment in determining whether, based on our own review of the record, the challenged claims arise from protected activity. [Citations.] In addition to the pleadings, we may consider affidavits concerning the facts upon which liability is based." (*Ibid.*)

I. The Trial Court Properly Struck Plaintiff's Causes Of Action For Intentional Interference With Contractual Relations And Prospective Economic Relations

We begin with plaintiff's cross-appeal of the trial court's order striking her two causes of action for intentional

interference because our resolution of that challenge informs our analysis of defendants' appeal.

A. The causes of action for intentional interference were based on defendants' filing a notice of lien, which plaintiff does not dispute was protected conduct

Plaintiff does not dispute the trial court's conclusion that filing a notice of lien constitutes protected activity under section 425.16, but argues that the trial court erred in finding that her intentional interference claims were based on that activity. Plaintiff asserts that "[t]he gravamen of the [intentional interference] causes of action is not the 'filing of a notice of lien' but the unjustified assertion of the right to be paid after abandoning a client and after receiving $435,000.00 in fees and costs for the alleged work rendered in the client's case." Plaintiff further states that "[t]he wrongful acts alleged in [the intentional interference] causes of action . . . do not include the filing of a notice of lien or opposition to the . . . motion [to enforce the settlement agreement]; rather, the wrongful acts concern the efforts by Defendant to collect unconscionable, duplicative, unearned, and excessive fees . . . without filing a lawsuit to establish their entitlement to fees."

Plaintiff's argument is belied by her complaint, which clearly establishes that defendants' filing of the notice of lien was the act allegedly disrupting plaintiff's contractual or prospective economic relations with LABite. Under plaintiff's cause of action for intentional interference with contractual relations she alleges that "Defendants asserted a bogus 'contractual' non-possessory attorney lien for 50% of the gross value of the [settlement] agreement on 8 September 2015 in order to disrupt performance

of the contract." Similarly, under plaintiff's cause of action for intentional interference with prospective economic relations she alleges that "Defendants engaged in wrongful conduct by asserting a purported non-possessory contractual lien of 50% of the gross proceeds of the 1 July 2015 settlement . . . ." Plaintiff alleges no other conduct on the part of defendants under these causes of action that could be construed as interfering with her contractual or prospective economic relations with LABite. Contrary to plaintiff's assertion that the filing of the notice of lien "is expressly not relevant to the pleaded causes of action," the allegations concerning the lien are in fact essential.

Plaintiff argues that "the complaint does not even mention the filing of notice of lien," thus suggesting some distinction between asserting a lien, which the complaint repeatedly alleges, and filing a notice of lien. A comparison of the complaint's allegations and the actual notice of lien, however, makes clear that in this case the two acts are identical.[7] The complaint alleges "On 8 September 2015 [KAF&A] asserted a lien for attorney fees on the matter of BC468840 *Claudia Finato v. LABite.com et al.* 'pursuant to the parties written contract to pay attorneys' fees.' " The date and, more importantly, the language quoted in the complaint (including the omission of an apostrophe after "parties") precisely match that of the notice of lien. There is no indication in the complaint or elsewhere that defendants asserted their lien in some fashion other than filing the notice of lien.

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[7] We take judicial notice of the notice of lien as part of the trial court record in the litigation between plaintiff and LABite. (Evid. Code, § 452, subd. (d).)

Plaintiff argues that an attorney asserting a lien must file a separate lawsuit to establish the lien's existence and enforce it. Because defendants have not done so, plaintiff argues, they "have yet to exercise their right to petition to establish their right to attorney fees from a former client." Thus, "it is evident that Plaintiff's interference with contract claims are not based on any prior petitioning activities."

Plaintiff is correct that an attorney asserting a lien on a current or former client's judgment "must bring a separate, independent action against the client to establish the existence of the lien, to determine the amount of the lien, and to enforce it." (*Carroll v. Interstate Brands Corp.* (2002) 99 Cal.App.4th 1168, 1173.) This is because "the attorney is not a party to the underlying action [in which the client obtained the judgment] and has no right to intervene," and therefore the trial court overseeing that action lacks jurisdiction "to determine whether the attorney is entitled to foreclose a lien on the judgment." (*Ibid.*) However, it is a permissible and common practice for the attorney to file a notice of lien in the underlying action. (*Id.* at p. 1172.)

Plaintiff does not challenge the trial court's conclusion that such a filing constitutes protected conduct under section 425.16, subdivision (e), which includes "any . . . writing made before a . . . judicial proceeding" or "in connection with an issue under consideration or review by a . . . judicial body." Although defendants may not have filed an independent action, they unquestionably filed notice of their lien "before a . . . judicial proceeding." In the absence of any argument to the contrary,

plaintiff provides no basis to reverse the trial court's determination on that point.[8]

Plaintiff cites *Travelers Casualty Insurance Company of America v. Hirsh* (9th Cir. 2016) 831 F.3d 1179 (*Travelers*) in defense of her intentional interference causes of action, claiming it "addressed a similar factual scenario" to her case. In *Travelers*, the Ninth Circuit held that a suit against an attorney for wrongfully retaining settlement funds was not protected under section 425.16, because such a claim was not based on the attorney's work in the underlying lawsuit. (*Id.* at p. 1181.) The case did not involve attorney liens or claims for intentional interference with contractual or prospective economic relations. We fail to see how it is factually similar to the case before us, or how it has any relevance to plaintiff's arguments.

B. Plaintiff has not shown a probability of success on her intentional interference claims

We move on to the second step of the anti-SLAPP analysis and agree with the trial court's ruling that plaintiff failed to make the required prima facie factual showing in support of her intentional interference claims.

"To prevail on a cause of action for intentional interference with contractual relations, a plaintiff must plead and prove (1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach

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8 We express no opinion as to whether other fee-collection efforts, such as letters just requesting payment of fees sent by attorneys to clients or former clients, constitute protected conduct.

or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1148.)

Intentional interference with prospective economic advantage requires proof of "(1) the existence, between the plaintiff and some third party, of an economic relationship that contains the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentionally wrongful acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm proximately caused by the defendant's action." (*Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 512.)

As the trial court correctly noted, plaintiff provided virtually no evidence in support of her intentional interference claims. Critically, plaintiff submitted no evidence of actual disruption of a contractual or prospective economic relationship—plaintiff's counsel's declaration mentions the notice of lien but is silent as to LABite's reaction to the notice. Plaintiff also submitted no evidence of LABite's position on disbursing the settlement proceeds, or its role in the underlying action when plaintiff moved to enforce the settlement agreement.[9] In fact, the

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[9] Defendants' opposition to plaintiff's motion to enforce the settlement included a declaration from defendant Hernandez, which stated that plaintiff's counsel had informed her that LABite "would not distribute any settlement funds to anyone" until the trial court resolved the fee dispute. Plaintiff did not identify this evidence to support her causes of action. Even if she had, it would be inadmissible hearsay under Evidence Code section 1200, and inadequate to satisfy the second step of the anti-SLAPP analysis. (See *HMS Capital, Inc. v. Lawyers Title*

complaint alleged that LABite did not oppose the enforcement motion, although defendants did.

Also lacking is any evidence of plaintiff's allegations that defendants wrongfully asserted a lien for "50% of the gross value" of the settlement agreement. The trial court correctly stated that *plaintiff* had not submitted any evidence of a notice of lien at all, albeit the notice was included in defendants' request for judicial notice. Further, the notice, as submitted by defendants, asserted the lien "pursuant to the parties[']written contract to pay attorneys' fees" without specifying a percentage or amount. Defendants' notice was consistent with the terms of KAF&A's fee agreement with plaintiff, which in the event of the firm's termination allowed it to recover the "reasonable value" of its services and any unreimbursed costs and expenses "from any settlement, judgment or other recovery."

We agree with the trial court that in the absence of any evidence of what transpired between plaintiff and LABite after defendants filed the notice of lien, or any indication that in filing the lien defendants sought anything more than recovery of the value of their services and unpaid costs, we cannot infer an intent to interfere or that actual interference occurred.

Plaintiff argues that she met her burden by adequately pleading the causes of action in her complaint, asserting that she has "state[d] a claim of intentional interference with contractual relations for purposes of section 425.16." This argument is unavailing. Although a plaintiff may rely solely on the pleadings to defeat a demurrer, more is required to overcome an anti-

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Co. (2004) 118 Cal.App.4th 204, 212 (*HMS Capital*) [plaintiff must oppose anti-SLAPP motion with "evidence that would be admissible at trial"].)

SLAPP motion, which demands "a prima facie factual showing sufficient to sustain a favorable judgment." (*Baral*, *supra*, 1 Cal.5th at pp. 384-385; see also *HMS Capital*, *supra*, 118 Cal.App.4th at p. 212 ["In opposing an anti-SLAPP motion, the plaintiff cannot rely on the allegations of the complaint, but must produce evidence that would be admissible at trial"].) Plaintiff has failed to make that showing here.

II. The Trial Court Erred In Not Striking Plaintiff's Malpractice Allegations Based On Defendants' Filing Their Notice of Lien

We turn now to defendants' challenge to the trial court's denial in part of their special motion to strike, beginning with plaintiff's cause of action for malpractice. Defendants argue the trial court erred in concluding that plaintiff's cause of action did not target protected conduct. We agree in part, holding that the trial court should have struck the allegations pertaining to defendants' filing notice of their lien. The trial court properly denied the motion as to the allegations unrelated to the lien.

A. Plaintiff's allegations based on defendants' notice of lien targeted conduct plaintiff does not dispute is protected

Plaintiff alleged several acts she claimed "amount[ed] to a failure to provide competent legal representation causing appreciable harm": (1) defendants "decided the amount of the [class action] settlement and the allocation of client recovery and attorney fees" without consent of plaintiff or any other clients; (2) defendants "abandoned Plaintiff and her case" by "attempt[ing] to release all Plaintiff's individual and representative claims, without her consent and authorization";

(3) defendants "undertook the representation of Tim Baker" despite knowing that "Mr. Baker's interests were directly adverse to those of Plaintiff"; (4) defendants " 'fired' Plaintiff as the named party in her own case . . . and as an appointed class representative"; (5) defendants "filed a global amended class complaint" for the purpose of removing plaintiff as class representative, releasing her wrongful termination cause of action, and to impede her ability to recover damages from the settlement; (6) defendants asserted a lien for 50 percent of plaintiff's settlement proceeds despite "receiving excessive, inflated, and unearned fees" in the class action settlement and despite having been terminated by plaintiff; and (7) defendants "maintain[ed] their claim of entitlement" to 50 percent of plaintiff's settlement, thus "undermin[ing]" and "ultimately invalidat[ing] the agreement" when the trial court denied plaintiff's motion to enforce the settlement.[10]

In describing her damages, plaintiff alleged that but for defendants' negligence and failure to abide by the rules of professional conduct she "would not have lost the right to pursue her claim for wrongful termination and a representative claim under PAGA; Plaintiff's individual claims would not have been discarded in favor of the class claims; Plaintiff would not have been impaired in her ability to recover the full value of her claims from [her] former employer; Plaintiff would not have lost the benefit of the confidential settlement agreement reached with the

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[10] Some of plaintiff's malpractice allegations appear directed at KAF&A only, while others are directed at all defendants. For purposes of this appeal the distinction is irrelevant, so we simply refer to "defendants" in summarizing the allegations.

assistance of the state court and in reliance on the explicit language of the judgment; and Plaintiff would not have incurred legal fees and expenses defending and seeking to enforce the confidential settlement agreement reached on 1 July 2015 and/or to recover on [her] original claim."

The trial court found that none of plaintiff's allegations targeted protected conduct, citing "[w]ell-established law hold[ing] that SLAPP does not apply to legal malpractice claims."

The trial court was correct that numerous courts have held, as a general matter, that "garden variety" claims for attorney malpractice or breach of fiduciary duty are not subject to a special motion to strike under section 425.16. (See, e.g., *Kolar v. Donahue, McIntosh & Hammerton* (2006) 145 Cal.App.4th 1532, 1539 (*Kolar*); see also *Castleman v. Sagaser* (2013) 216 Cal.App.4th 481, 491 ["A growing body of case law holds that actions based on an attorney's breach of professional and ethical duties owed to a client are not SLAPP suits, even though protected litigation activity features prominently in the factual background"].)

Kolar, for example, held that "attorney malpractice is not a protected right" under the anti-SLAPP statute: "A malpractice claim focusing on an attorney's incompetent handling of a previous lawsuit does not have the chilling effect on advocacy found in malicious prosecution, libel, and other claims typically covered by the anti-SLAPP statute. In a malpractice suit, the client is not suing because the attorney petitioned on his or her behalf, but because the attorney did not competently represent the client's interests while doing so. Instead of chilling the petitioning activity, the threat of malpractice encourages the attorney to petition competently and zealously. This is vastly

different from a third party suing an attorney for petitioning activity, which clearly could have a chilling effect." (*Kolar*, at pp. 1539–1540). *PrediWave Corp. v. Simpson Thacher & Bartlett LLP* (2009) 179 Cal.App.4th 1204 (*PrediWave*) cited *Kolar* favorably and concluded "it is unreasonable to interpret [the language of section 425.16, subdivision (b)] to include a client's causes of action against the client's own attorney arising from litigation-related activities undertaken for that client." (*PrediWave*, at p. 1228.) At least one court took the position, however, that these principles apply only to claims "brought by former clients against their former attorneys based on the attorneys' acts on behalf of those clients"; in contrast, claims by former clients against former attorneys "based upon statements or conduct solely on behalf of *different* clients," or "nonclients' causes of action against attorneys," are subject to section 425.16. (*Thayer v. Kabateck Brown Kellner LLP* (2012) 207 Cal.App.4th 141, 158 (*Thayer*), italics added.)

Whereas *Kolar* and *PrediWave* reached their holdings by analyzing the intent of the anti-SLAPP statute, other courts have achieved similar outcomes by concluding that an attorney's protected petitioning activity was merely "incidental" to the allegations underlying a former client's causes of action. (See, e.g., *Freeman v. Schack* (2007) 154 Cal.App.4th 719, 732 (*Freeman*).) In *Freeman*, the plaintiffs sued their former attorney for breach of contract, professional negligence, and breach of fiduciary duty after he allegedly "abandon[ed] them in order to represent adverse interests in the same and different litigation." (*Id.* at p. 722.) Akin to the case before us, plaintiffs alleged that, among other things, the attorney had recruited a class representative with interests adverse to their own and

"espoused . . . a settlement plan that was wholly adverse to the settlement plan that plaintiffs had long advocated." (*Id.* at p. 728.) The Court of Appeal held that "the principal thrust of the conduct underlying [the plaintiffs'] causes of action is not [the attorney's] filing or settlement of litigation," but "his undertaking to represent a party with interests adverse to plaintiffs, in violation of the duty of loyalty." (*Id.* at p. 732.) "In our view, plaintiffs' allegations concerning [the attorney's] filing and settlement of the [class] litigation are incidental to the allegations of breach of contract, negligence in failing to properly represent their interests, and breach of fiduciary duty arising from his representation of clients with adverse interests." (*Ibid.*)

Defendants do not dispute the general proposition that legal malpractice claims are not within the ambit of section 425.16. They argue, however, that the "true target" of plaintiff's cause of action is defendants' assertion of their lien, which they contend (and plaintiff does not dispute) is protected conduct.

We agree there is a distinction between plaintiff's allegations concerning defendants' acts in representing her, either as a client or a class member, and defendants' lien-related conduct, which took place after plaintiff had terminated defendants' services and opted out of the class they represented. Plaintiff's allegations unrelated to the lien—namely, that defendants settled the class claims without her consent, abandoned her case, recruited a class representative with adverse interests, and filed an amended class complaint removing her as named representative—are based on defendants' acts on behalf of plaintiff or the class of which she was a part. Thus, as claims by a former client arising from the attorneys' acts on her behalf, they are not subject to section 425.16. (*Thayer*,

supra, 207 Cal.App.4th at p. 158.) Alternatively, under *Freeman* those allegations would fall outside of section 425.16 because they target defendants' failure to represent a client's or class member's interests properly, with the filing and settling of the class action merely incidental to those allegations. (*Freeman*, *supra*, 154 Cal.App.4th at p. 732.)

Plaintiff's allegations that defendants acted wrongfully by asserting their lien and maintaining entitlement to a share of the settlement proceeds, however, do not address conduct by defendants while they were acting on behalf of plaintiff or the class. Defendants asserted the lien on their own behalf, not as attorneys representing clients but as a business entity seeking payment for its services. Under *Thayer*, therefore, defendants' conduct is not exempt from the protections of section 425.16. (See *Thayer*, *supra*, 207 Cal.App.4th at p. 158.) Nor can the filing of notice of lien be considered "incidental" to some other breach of duty where the conduct plaintiff alleged was malpractice was the assertion of the lien (which, as we have discussed, is inseparable from the filing of the notice of lien) and the resulting alleged undermining of her settlement agreement with LABite. Although on appeal plaintiff attempts to recharacterize defendants' allegedly wrongful conduct as "claiming entitlement" to 50 percent of the settlement or "s[eeking] more in fees than what they were entitled to receive," as set forth above, the complaint is clear that the targeted action is the filing of the notice of lien, not some abstract claim of entitlement.

Plaintiff's allegations of damages stemming from the lost benefit of the confidential settlement agreement and the fees and expenses incurred attempting to enforce that agreement also implicate protected activity, because plaintiff alleges those

damages flowed directly from defendants' assertion of their lien and their opposition to plaintiff's motion to enforce the settlement.

Defendants raise several arguments in favor of striking some of the non-lien related allegations as well. Defendants arguments are not well-founded.

Defendants argue that the allegations that they committed malpractice by undertaking representation of Baker and filing an amended complaint concern acts taken on behalf of clients other than plaintiff and thus, under *Thayer*, target protected conduct. This argument runs contrary to the analysis in *Freema*n, which held that abandonment of a client in favor of adverse interests is not protected conduct, and any related court filings or settlements are incidental to the otherwise unprotected breach of duty and failure to represent the client's interests. (*Freeman*, *supra*, 154 Cal.App.4th at p. 732.) Moreover, at the time defendants undertook representation of Baker and filed the amended complaint, plaintiff was still a class member to whom defendants owed a duty of care. (See *Janik v. Rudy, Exelrod & Zieff* (2004) 119 Cal.App.4th 930, 937 ["Reported decisions . . . assume the right of class members to hold class counsel responsible for negligence in the handling of claims certified for class treatment."].)

Defendants also argue that the malpractice allegations other than those related to the lien are a "smokescreen[ ] designed to obfuscate the true target of this claim." Defendants argue that the non-lien allegations cannot underlie plaintiff's malpractice cause of action because they are outside the statute of limitations, plaintiff has not alleged any damage from those actions, or they are contradicted

by plaintiff's own complaint. To the extent defendants are suggesting that those allegations should be struck as meritless, we cannot do so in an appeal from the denial of an anti-SLAPP motion if those allegations do not come within the purview of the anti-SLAPP statute. When a cause of action is "based on allegations of both protected and unprotected activity, the unprotected activity is disregarded" at the first step of the anti-SLAPP analysis, and only the protected activity is subject to the second step. (*Baral*, *supra*, 1 Cal.5th at p. 396.) Thus, we have no basis to address the merits of plaintiff's allegations of unprotected conduct.[11]

B. Plaintiff has not shown a probability of success on her lien-related malpractice claims

Having concluded that plaintiff's lien-related claims are subject to the protections of section 425.16, we proceed to step two of the analysis and hold that plaintiff has failed to show a probability of success on those claims.

The elements of a cause of action for legal malpractice are "[a] duty of the attorney to use such skill, prudence, and diligence as members of his or her profession commonly possess and exercise; breach of that duty; a proximate causal connection

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11 Defendants have not requested specifically that we strike particular allegations within the complaint as opposed to entire causes of action. However, defendants cite *Baral* extensively, including its instructions regarding the treatment of causes of action incorporating both protected and unprotected activity. Further, defendants identify throughout their briefing allegations pertaining to their lien, thus making clear which allegations they believe target protected activity. (See *Baral*, *supra*, 1 Cal.5th at p. 396.)

between the breach and the resulting injury; and actual loss or damage resulting from the attorney's negligence." (*Kasem v. Dion-Kindem* (2014) 230 Cal.App.4th 1395, 1399.)

Plaintiff cannot show a probability of success because she fails to identify what duty defendants have breached by asserting their lien. She cites no authority for the proposition that assertion of a lien, even an allegedly invalid one, is a breach of duty. Plaintiff argues that "an attorney who abandons a client or withdraws from a case because the client rejects a settlement cannot seek attorney fees." Plaintiff also contends that " 'an attorney may not recover for services rendered in contradiction to the requirements of professional responsibility.' " The fact that an attorney may not be entitled to fees due to a breach of professional duties, however, does not mean that the attorney breaches an *additional* duty merely by seeking those fees.

Plaintiff also refers in her briefing to "unconscionable, duplicative, unearned, and excessive fees," but even assuming seeking such fees is a breach of duty giving rise to a malpractice claim, plaintiff has provided no evidence that defendants did so. As we have discussed, the notice of lien filed by defendants did not state an amount or percentage, but simply invoked the parties' fee agreement. According to the terms of that agreement, defendants were entitled to the reasonable value of their services. Defendants would be entitled to this even absent a written agreement: "The well-established rule is . . . that '[i]n the absence of an agreement upon the subject, [the client] must be deemed to have promised to pay [the attorney] the reasonable value of the services performed in his behalf and with his consent and knowledge.' " (*Flannery v. Prentice* (2001) 26 Cal.4th 572, 589.) It would appear defendants sought nothing more than

what the contract and the law permit. Thus, plaintiff has failed to establish that defendants breached a duty by asserting their lien.[12]

III. The Trial Court Erred In Not Striking Plaintiff's Allegations Of Breach Of Fiduciary Duty Based On Defendants' Notice of Lien

As with plaintiff's malpractice cause of action, we hold that her allegations that defendants breached their fiduciary duties to her by asserting their fee lien targeted protected conduct. Plaintiff alleged that defendants breached fiduciary obligations "to represent Plaintiff competently; to avoid multiple representations that posed or created conflicts of interest; to act in Plaintiff's best interests and not to engage in conduct to Plaintiff's detriment; to place Plaintiff's interests above Defendants' interest in collecting fees; and to protect and preserve Plaintiff's interests above all others." Plaintiff alleged that she suffered damages from these breaches, including "(1) the value of her bargain as reflected in the 1 July 2015 confidential settlement agreement increased for prejudgment interest; (2) the value of the lost claims for wrongful termination and the representative claim under PAGA; (3) the cost of the additional litigation in order to recover on her original claims; (4) and the additional legal fees and expenses defending and seeking to enforce the confidential settlement agreement reached on 1 July 2015."

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[12] In so holding, we do not decide the question of whether defendants actually are entitled to compensation, only that plaintiff has failed to show that defendants breached a duty by claiming such entitlement.

Under the principles espoused in *Kolar*, *PrediWave*, and *Freeman*, plaintiff's allegations regarding competent representation and avoiding conflicts of interest, like her allegations of malpractice, do not involve protected conduct. The allegation that defendants' breached their duties by "collecting fees," however, logically must refer to defendants' assertion of their lien and opposition to plaintiff's efforts to enforce the settlement agreement, because the complaint contains no other allegations of fee collection apart from those activities. Moreover, two of the alleged items of damages relate solely to the lien and its aftermath: the loss of the value of the settlement agreement, and the "additional legal fees and expenses defending and seeking to enforce" the settlement.

As we have explained, the principles articulated in *Kolar*, *PrediWave*, and *Freeman* do not apply to defendants' lien-related activity, and plaintiff has not challenged the trial court's conclusion that filing a notice of lien constitutes protected activity. Thus, defendants have satisfied their burden to establish that plaintiff's lien-related allegations underlying her cause of action for breach of fiduciary duty target activity protected under section 425.16.

Plaintiff for her part has not shown a probability of success on those claims for the same reasons she failed to make that showing on her malpractice claims: She has identified no authority that collection of fees is a breach of duty, nor has she shown that defendants did anything more than assert their right to the reasonable value of their services as provided in the contingency fee agreement.

Defendants argue again that plaintiff's non-lien allegations are meritless, an issue *Baral* precludes us from reaching. (*Baral*, *supra*, 1 Cal.5th at p. 396.)

IV. The Trial Court Erred In Not Striking Plaintiff's Allegations Of Breach Of Contract Based On Defendants' Notice of Lien

Plaintiff alleged several breaches of her fee agreement with defendants. First, she alleged that defendants breached the agreement by settling the class action and superseding her complaint with the global amended complaint. Second, she alleged defendants "refused to release Plaintiff's file to her or her new counsel" after she terminated their services. Third, she alleged defendants breached the agreement "by asserting a contractual non-possessory lien when no such valid lien had been created through Plaintiff's informed consent; by seeking recovery of 50% of the gross proceeds of Plaintiff's post-termination settlement; and by failing to take prompt action to establish the amount, if any, of the value of any earned but uncompensated reasonable attorney fees incurred on behalf of Plaintiff." Plaintiff claimed damages "in the form of additional costs of litigation, the loss of asserted but wrongfully released claims, and the lost benefit of [her] 1 July 2015 bargain with [LABite]."

As for the allegations concerning settling the class action and filing an amended complaint, we see no meaningful distinction between those and the allegations of conduct deemed unprotected in *Freeman*, which held that the defendant attorney's filing and settling a class action was "incidental" to the allegations of breach of contract. (*Freeman*, *supra*, 154 Cal.App.4th at p. 732.) The allegations regarding defendants' failure to release plaintiff's file do not address any

actions before a judicial body or that otherwise implicate defendants' right to petition, and thus are unprotected under section 425.16. The allegation that defendants "fail[ed] to take prompt action to establish the amount" of any outstanding fees likewise does not target defendants' assertion of their right to petition. (See *Jespersen v. Zubiate-Beauchamp* (2003) 114 Cal.App.4th 624, 631 [attorney's failure to comply with litigation responsibilities is not "act in furtherance of anyone's right of petition or free speech"].)

For the reasons we have already discussed, however, the allegations concerning assertion of the lien and seeking 50 percent of plaintiff's recovery do target protected conduct. On appeal, plaintiff characterizes defendants' challenged conduct as "s[eeking] more in fees than what they were entitled to receive as compensation," but, again, the complaint makes clear that the only way in which defendants sought fees was by filing the notice of lien and opposing plaintiff's attempts to enforce the settlement, both of which plaintiff does not dispute are protected under section 425.16.

Here also plaintiff has failed to show any probability of success on her lien-related contract claims. Plaintiff identifies nothing in the fee agreement prohibiting defendants from collecting fees, filing a notice of lien, or asserting their right to payment in opposition to plaintiff's attempt to enforce a settlement that excluded them. Although plaintiff contends defendants were not entitled to assert a lien or seek further compensation under the agreement, she points to no authority for the proposition that seeking more than what one is entitled to under a contract constitutes a breach of that contract, nor does such a proposition logically follow. Because plaintiff has not

identified a contractual provision defendants breached by filing their notice of lien, her contractual claims based on that filing are not legally sustainable and must be stricken. This includes the allegation that she suffered damages from the "lost benefit" of her settlement agreement with LABite, which as we have explained in our discussion of plaintiff's intentional interference and malpractice claims, are damages arising solely from defendants' assertion of their lien.

We decline, however, to strike the allegation that plaintiff suffered damages "in the form of additional costs of litigation," an allegation identified by defendants as targeting their protected conduct. This allegation could encompass costs unrelated to the lien, such as plaintiff's efforts to litigate her individual claims after opting out of the class action, and therefore would relate to plaintiff's claims based on unprotected activity.

V. Plaintiff's Cause Of Action For Declaratory Relief Does Not Target Protected Conduct

Defendants argue that the trial court erred in declining to strike plaintiff's cause of action for declaratory relief. We disagree.

Plaintiff sought a declaration that "(A) No contractual lien was created by the 2011 contingency agreement between Plaintiff and Defendants; [¶] (B) Defendants abandoned Plaintiff without just cause and are thus not entitled to compensation for any work allegedly performed on behalf of Plaintiff; [¶] (C) [KAF&A] is not entitled to 50% of the proceeds of any settlement, judgment, or other recovery by Plaintiff; [¶] (D) In the alternative, even if a valid lien was created by contract, [KAF&A] has been fully compensated for all work performed on behalf of

Plaintiff by the $210,000.00 it received as compensation for its work in the [class-action settlement]."

As explained by our colleagues in Division Eight, a declaratory action in response to a law firm's assertion of a fee lien "does not seek to prevent defendants from exercising their right to assert their lien," but only "ask[s] the court to declare the parties' respective rights to attorney fees." (*Drell v. Cohen* (2014) 232 Cal.App.4th 24, 30 (*Drell*).) Thus, a complaint for declaratory relief that "d[oes] not allege defendants engaged in wrongdoing by asserting their lien" is not subject to a special motion to strike under section 425.16. (*Ibid.*)

Here, although plaintiff's other causes of action seek to impose liability based on defendants' assertion of their lien, her declaratory cause of action does not. She seeks instead to invalidate the lien and free herself from any further debt to defendants. The only "wrongdoing" arguably alleged is defendants' abandonment of plaintiff, which as we have explained is unprotected conduct. Defendants argue that the declaratory cause of action "expressly references the lien and expressly seeks a judicial declaration with respect to the lien." To the extent defendants are suggesting that mentioning the lien in the allegations necessarily implicates section 425.16, we disagree. In *Drell* the complaint also referred to the lien, but that did not affect the court's determination that section 425.16 did not apply: "The complaint necessarily refers to defendants' lien, since their demand letter is key evidence of plaintiff's need to obtain a declaration of rights." (*Drell*, *supra*, 232 Cal.App.4th at p. 30.) Here also the lien is "key evidence" that a declaratory judgment is needed, and its inclusion in the allegations does not

convert plaintiff's declaratory cause of action into a SLAPP suit.[13]

VI. Plaintiff's Constitutional Arguments Lack Merit

Plaintiff raises a number of arguments challenging the constitutionality of the anti-SLAPP procedure. The thrust of plaintiff's constitutional argument is that the anti-SLAPP statute impermissibly preferences defendants' speech over her right to petition the courts for redress, thus granting attorneys some form of immunity from suit from former clients. This argument is based on a false premise. As our Supreme Court has stated, section 425.16 "neither constitutes—nor enables courts to effect—any kind of 'immunity' " from suit, because "the statute poses no obstacle to suits that possess minimal merit." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 93.) Although plaintiff argues that in practice, the anti-SLAPP statute is applied overbroadly to dismiss meritorious suits, she offers no evidence or authority in support of this argument, and we therefore have no cause to address it. (See *Carson v. Mercury Ins. Co.* (2012) 210 Cal.App.4th 409, 430 (*Carson*) [issue deemed waived if unsupported by " 'reasoned argument and citations to authority' "].)

Plaintiff argues that to the extent her complaint targets defendants' speech, such speech is "commercial" and entitled to

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[13] Defendants also challenge the trial court's denial of their motion to strike plaintiff's cause of action for restitution. Because the trial court sustained the demurrer to that cause of action, and plaintiff has not appealed or otherwise contested that order before us, defendants' challenge is moot, and we decline to address it.

less protection under the First Amendment to the United States Constitution. Defendants are not seeking protection under the First Amendment, however, but under California's anti-SLAPP statute, which on its face does not offer lesser protection to the communicative acts of attorneys or other professionals.[14] As we have discussed, case law has narrowed the reach of section 425.16 in cases of attorney malpractice or breach of duty, and we have applied those principles in reaching our holding. Plaintiff cites no authority further limiting the scope of 425.16 under the circumstances of this case.

Similarly, plaintiff's argument that the First Amendment only protects speakers from tort liability "when there is a reasonable relationship between the 'matter of public concern' and the speech's target" has no application here, where defendants invoke the protections of section 425.16, not the First Amendment, and plaintiff cites no authority applying her stated principle in the anti-SLAPP context.

Plaintiff claims section 425.16's definition of an " 'act in furtherance of a person's right of petition or free speech' " is impermissibly vague, noting that regulations of First Amendment freedoms must be narrow. Plaintiff argues that the statute "results in the chilling of protected speech." Again, however, plaintiff fails to support her position with reasoned argument or evidence, and does not explain in what way the language is vague (other than to object to defendants' allegedly

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[14] We note that section 425.17, subdivision (c) exempts certain types of commercial speech from anti-SLAPP protections, such as a salesperson's representations to a customer. Plaintiff does not contend that defendants' alleged conduct falls within this exemption.

interpreting it to insulate them from breaches of fiduciary and ethical duties, an interpretation we have not adopted). Plaintiff concedes that an anti-SLAPP law may "promote[ ] compelling state interests" by "prevent[ing] the harm caused by filing frivolous lawsuits motivated solely to harass, vex, or silence legitimate criticisms." Other than her unsupported assertion that the statute has been applied to strike valid claims, she does not explain how the statute fails to promote this legitimate interest.

VII. Defendants' Special Motion To Strike And Appeal From The Partial Denial Of That Motion Are Not Frivolous

Plaintiff argues that given the case law holding that attorney malpractice suits do not fall within section 425.16, defendants' special motion to strike and subsequent appeal are frivolous. Plaintiff requests that we impose sanctions. Plaintiff cites no authority in support of her request, which is reason enough to deny it. (See *Carson*, *supra*, 210 Cal.App.4th at p. 430.) Regardless, the trial court granted defendants' motion to strike in part, and we have concluded on this appeal that the trial court's order should be modified to strike yet more allegations, thus establishing that defendants' motion and appeal were not frivolous.

VIII. The Trial Court May Determine Entitlement To And Amount Of Attorney Fees

Defendants request that we award them attorney fees and costs or issue an order permitting defendants to move for such fees and costs in the trial court. A prevailing defendant on a special motion to strike is entitled to recover attorney fees and

costs incurred in the trial court and on appeal. (§ 425.16, subd. (c); *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1267 (*Huntingdon*).) " 'Although this court has the power to fix attorney fees on appeal, the better practice is to have the trial court determine such fees.' " (*Huntingdon*, at p. 1267.) Defendants may seek appellate attorney fees through an appropriate motion in the trial court. The trial court shall "consider whether under the circumstances of this case the defendants are entitled to fees and, if so, the amount." (*Ibid.*)

DISPOSITION

The trial court's order is modified to grant the special motion to strike the following claims and allegations in plaintiff's complaint, in addition to the fifth and sixth causes of action already struck in the trial court's order: (1) in paragraph 55, that "all Defendants sought to collect 50% of the gross amount of a confidential settlement reached between Plaintiff and her former employer after Plaintiff, having been abandoned by the Firm, was compelled to opt out of her own case in order to pursue and preserve her individual claims"; (2) in paragraph 57, subparagraphs F and G in their entirety; (3) in paragraph 72, that had defendants exercised proper skill and care and comported with the rules of professional conduct, "Plaintiff would not have lost the benefit of the confidential settlement agreement reached with the assistance of the state court and in reliance on the explicit language of the judgment; and Plaintiff would not have incurred legal fees and expenses defending and seeking to enforce the confidential settlement agreement reached on 1 July 2015"; (4) in paragraph 76, that defendants breached their fiduciary obligation "to place Plaintiff's interests above Defendants' interest in collecting fees"; (5) in paragraph 77, that plaintiff suffered damages including "the value of her bargain as reflected in the 1 July 2015 confidential settlement agreement increased for prejudgment interest" and "the additional legal fees and expenses defending and seeking to enforce the confidential settlement agreement reached on 1 July 2015"; (6) in paragraph 89, that defendants breached the contract of representation "by asserting a contractual non-possessory lien when no such valid lien had been created through Plaintiff's informed consent" and "by seeking recovery of 50% of the gross proceeds of Plaintiff's

post-termination settlement"; (7) in paragraph 91, that plaintiff suffered damages including "the lost benefit of [her] 1 July 2015 bargain with her prior employer."

So modified, the order is affirmed. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

JOHNSON, Acting P. J.

CURREY, J.*

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