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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ARMEN BOLADIAN et al.,

Plaintiffs and Appellants,

v.

STROOCK & STROOCK & LAVAN, et
al.,

Defendants and Respondents.

B268550 [related pending appeals
B269508, B267950, B270472]

(Los Angeles County
Super. Ct. No. BC576665)

APPEAL from an order of the Superior Court of Los Angeles County, Joseph Kalin, Judge. Affirmed.

King & Ballow and Paul H. Duvall for Plaintiffs and Appellants.

Stroock & Stroock & Lavan, Allan S. Cohen, Crystal Y. Jonelis and John R. Loftus for Defendants and Respondents.

Plaintiffs and appellants Armen Boladian (Boladian), Bridgeport Music, Inc. (Bridgeport), and Westbound Records, Inc. (Westbound) (sometimes collectively referred to as Boladian) appeal an order granting a special motion to strike their malicious prosecution complaint. (Code Civ. Proc., § 425.16.) The moving defendants, the respondents herein, are the law firm of Stroock & Stroock & Lavan (Stroock) and Attorney Daniel A. Rozansky (Rozansky) (sometimes collectively referred to as Stroock).¹

We conclude that in opposing the special motion to strike, Boladian failed to meet his burden to make a prima facie showing that Stroock acted with malice. Therefore, the order granting the anti-SLAPP motion is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

1. The underlying action.

On December 5, 2011, musician George Clinton filed suit in the United States District Court for the Central District of California against Westbound and its owner, Boladian, among others. Clinton initially was represented in that action by Attorney Larry H. Clough.

The original complaint, which contained numerous causes of action, alleged as follows: Clinton is the original creator of, and has rights, title and interest in, the Funkadelic sound recordings released by Westbound (the Westbound Sound

¹ The order granting the special motion to strike, or anti-SLAPP motion, is appealable. (Code Civ. Proc., § 425.16, subd. (i), § 904.1, subd. (a)(13).)

All further statutory references are to the Code of Civil Procedure, unless otherwise specified.

Recordings). In 1969, in an oral agreement, Clinton granted Westbound rights to said recordings in exchange for Westbound's duty to account and pay 50 percent of monies collected for the sale and commercial exploitation of those recordings. Defendants "unlawfully utilized the [recordings] without the permission of [Clinton] and without accounting or paying royalties to [Clinton]." Clinton sought, inter alia, a judicial declaration that he, and not Boladian, was the owner of all rights relating to the copyright interests and sound recordings comprising the Westbound Sound Recordings.

The original complaint also alleged Clinton's ownership of the copyrights to the musical works and sound recordings known as the Warner Brothers Sound Recordings or Warner Masters, consisting of recordings originally released by Warner Brothers on the albums "Uncle Jam Wants You," "One Nation Under a Groove," "Hardcore Jollies," and "Electric Spanking of War Babies."

On January 7, 2013, the court granted Stroock's request to substitute into the case in place of Clough, who had suffered a series of heart attacks and strokes.²

On January 7, 2013, the matter was before Judge Manuel L. Real on an order to show cause why the action should not be dismissed for lack of prosecution. Judge Real ordered the action

² Before substituting into the case, Stroock advised Paul Duvall, Boladian's counsel, that it was not Stroock's intention to proceed on the original complaint, and that Stroock intended to amend the complaint to deal only with the Warner Brothers Sound Recordings. Stroock asked that Duvall stipulate to the filing of an amended pleading.

dismissed without prejudice, with 30 days leave to file an amended complaint.

On February 6, 2013, Clinton, through the Stroock firm, filed a first amended complaint, which added Bridgeport as a defendant and narrowed the pleading to two causes of action: copyright infringement (17 U.S.C. § 501), and declaratory relief, relating only to ownership of the Warner Masters; the amended pleading omitted any claims relating to the Westbound Sound Recordings.

On April 1, 2013, less than three months after Stroock substituted into the case, Judge Real granted a defense motion to dismiss for failure to state a claim, and as to Bridgeport, dismissal for lack of personal jurisdiction. The April 1, 2013 order stated: “The Court will issue a proposed order.”

On May 2, 2013, Judge Real signed and entered an order dismissing the underlying action with prejudice. The court ruled, *inter alia*, it lacked personal jurisdiction over Bridgeport; Clinton failed to state a claim for copyright infringement, as the amended complaint was completely devoid of facts concerning any specific instances of infringement; the declaratory relief claim was duplicative of the copyright infringement claim and was unnecessary; and Clinton was not entitled to further leave to amend.³

³ Boladian filed a motion for Rule 11 sanctions (Fed. Rules Civ. Proc., rule 11) against Clinton, Clough, and Rozansky, contending that Clinton and his counsel should be sanctioned because they pursued the action despite being advised that Clinton’s claims were futile and frivolous. On May 6, 2013, Judge Real denied the motion.

On May 31, 2013, Clinton filed a notice of appeal to the Ninth Circuit. On May 8, 2014, the Ninth Circuit dismissed Clinton's appeal for failure to file an opening brief.

2. *The instant action.*

a. *Boladian's complaint for malicious prosecution.*

On March 25, 2015, Boladian, Bridgeport, and Westbound filed suit against Clinton and various attorneys, including Clough, Rozansky, and Stroock. As against the Stroock defendants, Boladian pled a cause of action for malicious prosecution of the underlying action, and alleged in relevant part:

About three weeks before Stroock substituted into the case, Duvall sent Rozansky a letter urging that he research Clinton's allegations before substituting into the matter. Duvall detailed the deficiencies in Clinton's claims and attached 82 pages of documents to support Duvall's position.

The complaint further pled: "Rozansky acted unreasonably in filing the Amended Complaint knowing that Clinton's claims lacked merit. Upon information and belief, the Amended Complaint was filed so Clinton could appear on [a] news broadcast and claim that he had a lawsuit pending in which he was fighting for millions of dollars [Boladian] allegedly owed him. As an attorney, Rozansky violated his oath of professional responsibility by filing a claim he knew to be baseless. Rozansky's position as a partner at Stroock imputes his liability for wrongdoing to Stroock, and therefore both parties are liable to [Boladian] for malicious prosecution."

b. *Stroock's special motion to strike.*

Stroock filed a special motion to strike, contending Boladian could not establish that Stroock lacked probable cause, or that Stroock filed the first amended complaint with malice.

Stroock also argued that Bridgeport could not establish a favorable termination because Bridgeport's dismissal in the underlying action was based on lack of jurisdiction.

Stroock asserted it had an ample factual basis for suing for copyright infringement, noting as follows: Clinton was the sole owner of the Warner Masters;⁴ Clinton contended Boladian used the sound recordings from the Warner Masters through compilation albums; Bridgeport's website allowed visitors to the site to listen to clips of Clinton sound recordings; on the Bridgeport website, there was no disclaimer that Bridgeport was offering only the underlying composition of the songs, and no statement that the sample sound recordings were by artists other than Clinton.

Stroock anticipated that Boladian would rely on Duvall's December 2012 letter to contend that Stroock lacked probable cause to file the first amended complaint. However, the evidence provided by Duvall related only to the Westbound Sound Recordings claims that Stroock omitted from the first amended complaint. With respect to the Warner Masters, Duvall's correspondence only contained general denials of liability without supporting evidence. Thus, Stroock was under no obligation to

⁴ Rozansky's supporting declaration stated that before substituting into the 2011 litigation, he reviewed the parties' litigation history, which included a 2005 order and judgment by Judge Real in *Montes v. Kaplan, Kenegos & Kadin*, in which Clinton was a cross-claimant. Judge Real decreed "that GEORGE CLINTON is the sole owner of the master recordings of the albums 'Hard Core Jollies,' 'One Nation under a Groove,' 'Uncle Jam Wants You' and 'Electric Spanking of War Babies' (the 'Masters') and has been the sole owner of the Masters since 1993."

defer to Boladian's denial of liability. Stroock also relied on Judge Real's denial of Boladian's motion for Rule 11 sanctions to contend that Stroock possessed probable cause for the claims made in the first amended complaint.

With respect to the element of malice, Stroock contended that Boladian's complaint was "devoid of a single fact indicating malice on behalf of the Stroock [defendants]."⁵

c. Boladian's opposition to the special motion to strike.

In opposition, Boladian asserted he had a probability of prevailing on his claim. He argued, inter alia, that Clinton's assertion that he was the sole owner of the Warner Masters was irrelevant because Boladian never claimed ownership of those master recordings. As for Clinton's claims relating to the Bridgeport website, had Stroock conducted even a cursory investigation, it would have known that Bridgeport owns the musical compositions underlying the Warner Masters, that Bridgeport had every right to license those compositions, and that Bridgeport did not actually offer to license any of the Warner Masters.⁶

⁵ Stroock indicated that if it were to prevail on its special motion to strike, it would move for attorney fees and costs at a later date.

⁶ "A Musical Composition consists of music, including any accompanying words, and is normally registered as a work of performing arts. . . . A musical composition may be in the form of a notated copy (for example, sheet music) or in the form of a phonorecord (for example, cassette tape, LP, or CD)." (<https://copyright.gov/register/pa-sr.html> [as of June 19, 2017].) A sound recording "results from the fixation of a series of musical, spoken, or other sounds." (*Ibid.*; see generally, *A & M*

With regard to the element of malice, Boladian further contended that “malice should be inferred from the facts establishing [Stroock’s] lack of probable cause.” Boladian argued Stroock chose to pursue the 2011 litigation despite being aware of relevant facts, including evidence provided by Boladian’s counsel explaining the lack of merit to Clinton’s claims. Boladian also relied on two other items to assert that Stroock acted with malice:

First, malice was established by the fact that before Stroock filed the first amended complaint, it was aware of the declaration of Jane Peterer, a former Bridgeport employee, which had been filed in other litigation.⁷ Boladian asserted that because the Peterer declaration had been stricken or sealed, Stroock “clearly knew the Peterer declaration was not trustworthy, and [Stroock’s] alleged reliance on the Declaration despite this knowledge is indicative of malice towards [Boladian] in pursuing the 2011 Litigation.”

Second, malice was established by Clinton’s appearance in a news broadcast in Detroit, which coincided with the filing of the

Records, Inc. v. Heilman (1977) 75 Cal.App.3d 554, 562–563 [noting distinction between rights in musical composition, consisting of tune and lyrics, and rights in the recording “‘fixing’ ” the performance of that musical composition].)

⁷ The Peterer declaration, among other things, asserted that Boladian had fraudulently altered a 1982 agreement pertaining to Clinton’s musical works and then recorded it in the U.S. Copyright office to create a claim of ownership of certain copyrights in Bridgeport’s name. Rozansky reviewed the Peterer declaration as part of his factual research, prior to substituting into the underlying action.

first amended complaint. Stroock “needed the Amended Complaint to be filed for Clinton to spread his lies about [Boladian] through the news story, which would not be possible if the case was finally dismissed.” Boladian’s supporting declaration stated he “believe[d]” that Stroock arranged for Clinton’s appearance in the broadcast, and that he “believe[d]” that the interview was part of a scheme to destroy Boladian’s reputation.

d. *Trial court’s ruling granting Stroock’s special motion to strike.*

After taking the matter under submission, the trial court granted Stroock’s anti-SLAPP motion in its entirety. The trial court found Stroock met its initial burden to establish that the malicious prosecution action arose out of Stroock’s protected activity, so as to shift the burden to Boladian to establish, with admissible evidence, a probability of success on the merits.

The trial court found that based on the facts Stroock “uncovered through investigation when they were asked to substitute in as Clinton’s counsel in the 2011 lawsuit, at least one reasonable attorney could connect the dots in a similar way and conclude there was some basis for pursuing a copyright infringement claim against Boladian and his companies. Accordingly, [Boladian] cannot establish a complete absence of probable cause.”

As for the element of malice, the trial court found that Boladian failed to show that Stroock acted without probable cause, and as a consequence, Boladian could not rely on facts showing an absence of probable cause to show malice. The trial court also rejected Boladian’s theory that the Peterer declaration could be used to show malice on the part of Stroock, because

Boladian failed to show that the Peterer declaration had been totally discredited. The trial court further found “no competent evidence establishing that [Stroock was] involved or even knew about Clinton’s newscast.” Finally, the trial court found that Stroock’s receipt of the Duvall letter did not show that Stroock acted with malice because notwithstanding the letter, Stroock could conclude that Clinton’s claims against Boladian were tenable.

As for Bridgeport, the trial court ruled that because Judge Real dismissed Bridgeport from the underlying action on jurisdictional grounds, Bridgeport could not show a favorable termination, and therefore Bridgeport could not prevail on its malicious prosecution claim against Stroock.

Boladian filed timely notices of appeal from the order granting Rozansky and Stroock’s anti-SLAPP motion.

CONTENTIONS

Boladian contends the trial court erred in granting Stroock’s anti-SLAPP motion because he established that the underlying action against Boladian was favorably terminated on the merits, Stroock lacked probable cause to file the first amended complaint, and Stroock acted with malice.

DISCUSSION

1. General principles.

“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.)

Our review of the trial court’s order granting the special motion to strike is de novo. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3 (*Soukup*).)

2. *The Stroock defendants met their burden with respect to the first step of the anti-SLAPP analysis.*

There is no question that the malicious prosecution action against Stroock arose from its protected activity in representing Clinton, who was the plaintiff in the underlying action against Boladian. (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 734–735 [malicious prosecution action necessarily arises from protected petitioning activity in filing the underlying lawsuit].)

Therefore, the issues before us relate to the second step of the analysis, namely, whether Boladian met his burden to establish a likelihood of prevailing on the malicious prosecution claim. (§ 425.16, subd. (b)(1).)

3. *Elements of the tort of malicious prosecution.*

As this court noted in *Downey Venture v. LMI Ins. Co.* (1998) 66 Cal.App.4th 478, 493, “ ‘Malicious prosecution is a disfavored action. [Citations.] This is due to the principles that favor open access to the courts for the redress of grievances.’ ” Therefore, “the elements of the tort have historically been carefully circumscribed so that litigants with potentially valid claims will not be deterred from bringing their claims to court by the prospect of a subsequent malicious prosecution claim.” (*Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 872 (*Sheldon Appel*).)

To establish “ ‘a cause of action for the malicious prosecution of a civil proceeding, a plaintiff must plead and prove that the prior action (1) was commenced by or at the direction of the defendant and was pursued to a legal termination in his, plaintiff’s, favor [citations]; (2) was brought without probable cause [citations]; and (3) was initiated with malice [citations].’ ” (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 676.)

4. *Boladian failed to make a prima facie showing that Stroock acted with malice.*

To withstand the anti-SLAPP motions, Boladian had the burden to make a prima facie showing, among other things, that Stroock acted with malice. (*Crowley v. Katleman, supra*, 8 Cal.4th at p. 676.) On our de novo review, we conclude that Boladian failed to present admissible evidence supporting a prima facie showing of malice. Therefore, we need not address whether Boladian is capable of prevailing on the other elements of the cause of action for malicious prosecution.

a. *General principles.*

“The ‘malice’ element of the malicious prosecution tort relates to the subjective intent or purpose with which the defendant acted in initiating the prior action.” (*Sheldon Appel, supra*, 47 Cal.3d at p. 874.) To support a finding of malice, the defendant’s motive “‘must have been something other than that of . . . the satisfaction in a civil action of some personal or financial purpose. [Citation.] The plaintiff must plead and prove actual ill will or some *improper* ulterior motive.’ Improper purposes can be established in cases in which, for instance (1) the person bringing the suit does not believe that the claim may be held valid; (2) the proceeding is initiated primarily because of hostility or ill will; (3) the proceeding is initiated solely for the purpose of depriving the opponent of a beneficial use of property; or (4) the proceeding is initiated for the purpose of forcing a settlement bearing no relation to the merits of the claim.” (*Daniels v. Robbins* (2010) 182 Cal.App.4th 204, 224 (*Daniels*).)

Since parties rarely admit an improper motive, malice is usually proven by circumstantial evidence and inferences drawn from the evidence. (*Daniels, supra*, 182 Cal.App.4th at p. 225.) Additionally, malice can be inferred when a party continues to prosecute an action after becoming aware that the action lacks probable cause. (*Id.* at p. 226.) Although a lack of probable cause is a factor that may be considered in determining if the claim was prosecuted with malice, the lack of probable cause must be supplemented by other, additional evidence. (*Silas v. Arden* (2012) 213 Cal.App.4th 75, 90.)

b. *Trial court properly found that Boladian failed to make a prima facie showing that Stroock acted with malice.*

Boladian contends he established the element of malice based on: Stroock's filing of the first amended complaint in the underlying action for the improper purpose of lending validity to Clinton's television appearance; Stroock's presentation of knowingly false allegations in the first amended complaint, based on Stroock's alleged knowledge that the Peterer declaration was baseless and its knowledge of Florida litigation that had been resolved in Boladian's favor; and Stroock's failure to complete a reasonable prior investigation before continuing the 2011 litigation or its failure to withdraw the complaint after learning it was unfounded.

We address seriatim the evidence on which Boladian relies to establish a prima facie showing of malice. We conclude Boladian's showing is insufficient to withstand Stroock's special motion to strike.

(1) *Clinton's Detroit television appearance.*

Boladian contends Stroock's motive in prosecuting the underlying action was to assist Clinton in publicly humiliating Boladian. Boladian emphasizes Clinton appeared in a news story on Detroit television on the same day that Stroock filed the first amended complaint, and argues there would have been no news broadcast had Stroock not filed the amended pleading.

The evidence Boladian cites for this theory of malice is Boladian's own declaration, wherein he expressed his belief that Stroock arranged for Clinton's television appearance, and his further belief that the television interview was part of a scheme to destroy Boladian's reputation. However, Boladian's belief with respect to the above lacks foundation and therefore does not

amount to a prima facie showing of facts that could support a favorable judgment if the evidence submitted by Boladian were credited. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 820.) We reiterate the ruling of the trial court, which stated: “Boladian’s beliefs are irrelevant, and this statement is inadmissible speculation.”

(2) *Stroock’s alleged reliance on the Peterer declaration in bringing the first amended complaint.*

Next, Boladian contends malice is shown based on the fact that Stroock knowingly made false allegations in its amended pleading. Boladian asserts that Stroock was repeatedly advised that allegations contained in the Peterer declaration were false, yet Stroock relied on its contents in drafting the allegations of the first amended complaint.

In support, Boladian’s papers cited a series of judicial rulings pertaining to the Peterer declaration. An exhibit to the Duvall declaration showed that on a motion to extend time, Judge Real in the underlying action had stricken the Peterer declaration as immaterial and noted it contained “scandalous accusations.” Also, the Boladian declaration stated that in other litigation, the Peterer declaration had been sealed, declared irrelevant, and found to contain inflammatory allegations.⁸

⁸ The Boladian declaration also stated that the court in one case “specifically stated that certain of Ms. Peterer’s allegations in those Declarations . . . *did not have any ‘basis in fact.’*” (Italics added.) However, the cited evidence does not support that statement in Boladian’s declaration. The ruling that was attached as an exhibit to Boladian’s declaration simply states “the court rejected [plaintiff] Tilmon-Jones’s attempt to reopen the matter, finding that her accusations of fraud did not have a

However, those rulings that the Peterer declaration should be sealed, or that it was irrelevant to the matter under consideration, or was scandalous or inflammatory, do not amount to a judicial determination that the Peterer declaration was not credible. Stroock's review of the Peterer declaration, among other materials reviewed by Stroock, does not give rise to an inference that Stroock had an improper motive in bringing the first amended complaint.

(3) *Stroock's knowledge of Clinton's Florida litigation.*

Boladian also contends that Stroock's knowledge of an adverse decision in Florida establishes that Stroock made knowingly false allegations in the first amended complaint.

By way of background, before substituting into the action, Rozansky reviewed Clinton's litigation history, including court records from a district court action in Florida. Boladian contends that Stroock's investigation would have revealed that the litigation in Florida established that Boladian owned the rights to the Warner Masters *compositions*. Therefore, according to Boladian, any claim by Clinton for copyright infringement relating to those compositions was *knowingly* made without merit and thus for an improper purpose. Boladian relies on the principle that "a person who attempts to establish a claim . . . knowing of its falsity can only be motivated by an improper purpose." (*Albertson v. Raboff* (1956) 46 Cal.2d 375, 383; accord, *Nunez v. Pennisi* (2015) 241 Cal.App.4th 861, 878.)

basis in fact." Boladian has not shown that this statement was a criticism of the Peterer declaration.

However, Stroock's first amended complaint alleged copyright infringement and declaratory relief with respect to the Warner Masters *sound recordings*, not with respect to the Warner Masters *compositions*, and Judge Real's decision in 2005 in *Montes v. Kaplan, Kenegos & Kadin* established Clinton's sole ownership of those sound recordings. (See fn. 4, *ante*.) Therefore, we reject Boladian's contention that Stroock's awareness of the Florida litigation, pertaining to rights in the musical *compositions*, reflects that Stroock acted with malice in suing with respect to the Warner Masters sound recordings.

(4) *Boladian's argument that malice may be inferred from Stroock's failure to investigate is undeveloped.*

Boladian's remaining argument is that malice may be inferred from evidence showing that Stroock did not properly investigate the claim before filing the amended complaint in the underlying action. The contention is without merit.

As a matter of law, possible negligence in conducting factual research is not enough on its own to show malice. (*Grindle v. Lorbeer* (1987) 196 Cal.App.3d 1461, 1463, 1467–1468 [affirming summary judgment because careless prefiling factual research by counsel did not permit an inference of malice]; *Daniels, supra*, 182 Cal.App.4th at p. 225.)

Moreover, Boladian's discussion in the opening brief that malice can be implied from Stroock's alleged failure to investigate is not supported by a single citation to any supporting evidence. If a party fails to support an argument with the necessary citations to the record, the argument will be deemed to have been waived. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.)⁹ The

⁹ In the appellant's *reply* brief, Boladian expands his discussion of the issue and supplies some record references to

opening brief does not specifically argue that the contents of Duvall's correspondence educated Stroock with respect to the Warner Masters issues, so that Stroock acted with malice in pursuing the litigation. In this regard, the opening brief merely refers globally to "facts, as set forth in the Complaint and the declarations of Boladian and Duvall." However, in opposing a special motion to strike, a "plaintiff cannot rely on his pleading at all, even if verified, to demonstrate a probability of success on the merits." (*Hecimovich v. Encinal School Parent Teacher Organization* (2012) 203 Cal.App.4th 450, 474.) Further, although our review of the anti-SLAPP ruling is de novo (*Soukup, supra*, 39 Cal.4th at p. 269, fn. 3), "de novo review does not obligate us to cull the record for the benefit of the appellant As with an appeal from any judgment, it is the appellant's responsibility to affirmatively demonstrate error and, therefore, to point out the triable issues the appellant claims are present by

support his assertion that Stroock maliciously prosecuted the action even after learning that it lacked probable cause to do so. However, "[a]n appellant cannot salvage a forfeited argument by belatedly addressing the argument in its reply brief. [Citation.]" (*SCI California Funeral Services, Inc. v. Five Bridges Foundation* (2012) 203 Cal.App.4th 549, 573, fn. 18.) Basic notions of fairness dictate that we decline to consider points that a party has chosen to withhold until the filing of its reply brief, because this deprives the respondent of the opportunity to address them on appeal. (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764; *American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453; see, e.g. *Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1295 [arguments raised for first time in reply brief and documents filed in a reply appendix with reply brief not considered because respondents lacked opportunity to respond].)

citation to the record and any supporting authority.” (*Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 116.)

Boladian’s burden is to present admissible evidence, not merely allegations (*Oviedo v. Windsor Twelve Properties, LLC* (2012) 212 Cal.App.4th 97, 109), for the claim that Stroock *knowingly* brought the first amended complaint without probable cause, or that it continued to prosecute the action after becoming aware that the action lacked probable cause. (*Daniels, supra*, 182 Cal.App.4th at p. 226.) Boladian has not met his burden on appeal.

DISPOSITION

The order granting the Stroock defendants' special motion to strike is affirmed. The Stroock defendants shall recover their costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL
REPORTS**

EDMON, P. J.

We concur:

LAVIN, J.

JOHNSON (MICHAEL), J.*

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