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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

BUWEI SHI XI, Individually and as
Personal Representative, etc., of the
Estate of Yanghua Xi,

Plaintiff and Appellant,

v.

LIN HUA XI,

Defendant and Respondent.

B277252

(Los Angeles County
Super. Ct. No. BC606663)

APPEAL from an order of the Superior Court of Los Angeles County, Debre K. Weintraub, Judge. Affirmed.

Ritt, Tai, Thvedt & Hodges, Warren O. Hodges, Jr., and Tiffany W. Tai for Plaintiff and Appellant.

LTL Attorneys, James M. Lee, David W. Ammons, and Timothy S. Fox for Defendant and Respondent.

INTRODUCTION

Appellant Buwei Shi Xi was married to Yanghua Xi.¹ After Yanghua's death, appellant allegedly entered into an agreement with Yanghua's sister, respondent Lin Hua Xi, and other members of his birth family (collectively the Xi Birth Family), whereby, in exchange for \$250,000, the Xi Birth Family would release all claims they had or might assert against Yanghua's estate. Subsequently, Yanghua's parents initiated estate proceedings against Yanghua's estate in China and Los Angeles Superior Court. Appellant, individually and as personal representative of Yanghua's estate, then filed a complaint against respondent, alleging that respondent had fraudulently promised to refrain from asserting claims on Yanghua's estate. Respondent filed a special motion to strike the entire complaint pursuant to Code of Civil Procedure section 425.16 (the anti-SLAPP motion).² The trial court summarily granted the motion, and appellant appealed. For the reasons set forth below, we conclude that the trial court did not err in granting the anti-SLAPP motion. Accordingly, we affirm.

¹ Because the parties share the same last name, we refer to them either by their first name or their litigation posture to avoid confusion.

Decedent Yanghua is referred to as "Yanghua" and "Yang Hua" in various pleadings. Because "Yanghua" is used in the complaint, we use that spelling to refer to decedent.

² All further statutory citations are to the Code of Civil Procedure, unless otherwise indicated.

FACTUAL BACKGROUND & PROCEDURAL HISTORY

A. *Appellant's Complaint*

On January 8, 2016, appellant filed a complaint for damages against respondent Lin and the estate of Lin's mother, Baozhen Wang Xi.³ According to the complaint, following Yanghua's death in 2011, his sister (Lin) and his mother (Baozhen) approached appellant and demanded that she "repay" \$250,000 that Yanghua had allegedly borrowed from the Xi Birth Family. Baozhen and respondent represented to appellant that if she paid them the requested \$250,000, "the Xi Birth Family would not have any other claims against Yanghua's estate or Buwei's properties and assets and there would be no further financial entanglement between the parties." In reliance on that representation, appellant transferred \$250,000 to Baozhen. Thereafter, pursuant to the agreement between the parties, respondent "signed and sent to Buwei a release on behalf of the Xi Birth Family, acknowledging receipt of the \$250,000 and confirming that the parties had no further financial involvement." The complaint further alleged that notwithstanding the release, Baozhen and her husband nominated Yanghua's brother (Gong Hua Xi) as the administrator for Yanghua's estate. When appellant filed a spousal property petition to confirm her right to the community property in the estate, Baozhen and her husband -- through Gong Hua Xi -- filed objections to appellant's petition.

³ Baozhen died prior to the filing of the complaint, and appellant later voluntarily dismissed the claims against her estate.

The complaint asserted causes of action for fraudulent misrepresentation, promissory fraud, negligent misrepresentation and unjust enrichment against both respondent and the estate of Baozhen Xi. It alleged that respondent and Baozhen's representation that there would be no further financial entanglement or involvement between appellant and the Xi Birth Family if appellant paid \$250,000 was false when made because respondent and Baozhen "had always planned to bring claims and petitions against Buwei in connection with Yanghua's estate, both in the United States and in China." The complaint alleged that respondent and Baozhen acted as each other's agents and/or were co-conspirators. It sought compensatory damages, punitive damages, and costs.

The complaint was not verified, and the release that respondent allegedly signed was not attached as an exhibit.

B. Respondent's Anti-SLAPP Motion

On April 13, 2016, respondent filed a special motion to strike the entire complaint, arguing that the causes of action arose from protected activity and appellant could not show a probability of prevailing on the merits. Respondent noted that the causes of action in the complaint were based on (1) Baozhen's nomination of Gong Hua as the administrator for Yanghua's estate and (2) Gong Hua's filing of an opposition to appellant's spousal property petition. Respondent set forth the circumstances of those acts as follows. Following Yanghua's death in 2011, appellant took no action to open probate. After waiting more than two years, on March 26, 2014, Gong Hua filed a petition for letters of administration to commence probate of Yanghua's estate. Included in the petition was a document from Yanghua's parents nominating his brother Gong Hua as the

administrator of Yanghua's estate. Respondent was not listed on any document. Less than a month after Gong Hua filed his petition to commence probate of Yanghua's estate, appellant filed her own petition, nominating herself as the administrator. The parties subsequently stipulated that appellant would be the administrator of the estate. Later, appellant filed a spousal property petition seeking to recharacterize two pieces of real property in the estate as community property. Appellant argued that although she was legally married to Yanghua in 1988, she secretly married him in 1984, and thus, the real properties were community property. Gong Hua filed an opposition to the spousal property petition. Neither Baozhen nor respondent were mentioned in the opposition papers.

In support of her anti-SLAPP motion, respondent argued that the causes of action in the complaint arose from Baozhen's participation in a judicial proceeding -- the probate action involving Yanghua's estate -- which is protected activity. After noting the complaint did not allege that respondent filed a petition for probate or opposed the spousal property petition, respondent asserted that her only participation in any probate action involving Yanghua's estate was her compliance with a deposition subpoena issued by appellant. She argued that complying with a deposition subpoena was protected conduct.

Respondent further argued that appellant could not show she would prevail on the merits of her claims. After noting that the complaint did not attach the release, respondent attached a copy of the release to the anti-SLAPP motion. The release states: *"I (Xi Lin Hua) and little Shi (Shi Bu Wei) do not have any financially disputed debt in the past and from this point on. I do not owe her. She does not owe me either. She and I do not owe*

each other. [¶] This is the proof!”⁴ (Italics added.) Respondent argued that none of the wrongful conduct alleged in the complaint -- the nomination and the opposition -- violated the terms of the release. Likewise, respondent asserted that answering questions at a deposition did not violate the terms of the release. Moreover, she argued it would be unjust for appellant to sue respondent for participating in the probate action when appellant herself compelled respondent to do so by noticing and taking respondent’s deposition.

C. *Appellant’s Opposition to Anti-SLAPP Motion*

Appellant opposed the anti-SLAPP motion, arguing that her complaint was “an action to enforce a paid-for release of claims,” not an action brought to chill defendants’ exercise of protected speech rights. Appellant noted that respondent “concede[d]” never filing or initiating any probate proceeding relevant to this case and described her participation in the probate proceeding as limited to giving deposition testimony. Thus, appellant asserted, respondent failed to show she engaged in any protected activity.

Appellant further argued that she had demonstrated a prima facie case for her fraud claims based on her concurrently filed declaration, excerpts from respondent’s deposition, and the release. In appellant’s declaration, she stated she “private[ly]” married Yanghua in 1984 and they began jointly purchasing properties together. Before Yanghua died, he had informed her that his family was litigious and “greedy,” and that he did not

⁴ Appellant did not dispute this release was the agreement referred to in her complaint. Indeed, she relied upon the release in her opposition to the anti-SLAPP motion.

trust them. Appellant stated that she learned from Yanghua that the members of the Xi Birth Family had filed many lawsuits against each other.⁵

According to appellant, after Yanghua died in 2011, respondent and Baozhen approached appellant with “a demand that I pay them a sum of money that they claimed Yanghua had borrowed from them, for costs they claimed to have expended on his behalf prior to his death, and for their interest in Yanghua’s property.” Baozhen and Lin represented to appellant that “if I paid them the requested \$250,000 the only claim the Xi Birth Family had and/or would assert against properties owned by me and Yanghua and Yanghua’s estate was the \$250,000, that the Xi Birth Family would not otherwise have or assert any claims or initiate any proceedings against Yanghua’s estate or our properties and assets, and that the Xi Birth Family would have no further financial entanglement or involvement with me and/or Yanghua’s estate.” Appellant asserted that neither Baozhen nor respondent provided any documentary evidence to substantiate their claims that Yanghua owed them money; nevertheless, appellant agreed to pay them \$250,000. She further asserted that notwithstanding the representations, Yanghua’s mother and father initiated proceedings in China (in their own names) and in Los Angeles Superior Court (via Gong Hua’s probate petition), asserting claims on Yanghua’s assets. Appellant stated that had she known that the Xi Birth Family intended to file claims

⁵ Appellant attached copies of the complaints in some of these lawsuits, including complaints filed by respondent’s brothers Gong Hua and Song Hua against respondent.

against her or her husband's estate or properties, she would never have agreed to pay them \$250,000.

During her deposition, respondent testified she had paid the utility and homeowners' association bills on properties owned by her brother. She also had paid \$60,000 for her brother's medication. Respondent further testified that in appellant's presence, her brother Yanghua had acknowledged borrowing \$250,000 from her to purchase properties in Shanghai. Respondent explained she wrote the release for appellant because "we felt really sad" about Yanghua's death and her mother (Baozhen) had said, "Why don't we figure out the monies between the family members just to figure out the amount?" Respondent, her mother, and appellant then determined "everything that was owed." Appellant paid the amount and respondent executed the release. As noted above, the release stated that appellant and respondent did not owe each other anything.

D. *Respondent's Reply*

Respondent argued that the sole conduct forming the basis for the claims against her was her appearance at a deposition noticed by appellant, and that her compelled attendance at a deposition was protected activity under the anti-SLAPP statute. She further argued that appellant had not demonstrated a probability of success on the merits because her compelled attendance did not violate the terms of the release. Additionally, respondent argued, appellant's claims against her were barred under the doctrine of unclean hands because it was appellant's own conduct in noticing respondent's deposition that caused respondent to allegedly break her promise not to participate in any actions involving Yanghua's estate.

E. *Trial Court's Ruling*

On June 29, 2016, the trial court granted respondent's anti-SLAPP motion. Neither party requested a statement of decision. Appellant timely appealed from the court's order granting the anti-SLAPP motion.

DISCUSSION

"A SLAPP suit -- a strategic lawsuit against public participation -- seeks to chill or punish a party's exercise of constitutional rights to free speech and to petition the government for redress of grievances. [Citation.] The Legislature enacted . . . section 425.16 -- known as the anti-SLAPP statute -- to provide a procedural remedy to dispose of lawsuits that are brought to chill the valid exercise of constitutional rights. [Citation.]" (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055-1056 (*Rusheen*)). To determine whether a cause of action should be stricken under the anti-SLAPP statute, section 425.16 establishes a two-part test. Under the first part, the party bringing the motion has the initial burden of showing that the cause of action arises from an act in furtherance of the right of free speech or petition -- i.e., that it arises from a protected activity. (*Zamos v. Stroud* (2004) 32 Cal.4th 958, 965.) Once the moving party has met its burden, the burden shifts to the other party to demonstrate a probability of prevailing on the cause of action. (*Ibid.*) Only a cause of action that satisfies both parts of the anti-SLAPP statute -- i.e., that arises from protected speech or petitioning and lacks even minimal merit -- is a SLAPP, subject to being stricken under the statute. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89 (*Navellier*)). An appellate court independently reviews the trial court's order granting a special

motion to strike under section 425.16. (*Rusheen, supra*, at p. 1055.)

A. *Appellant's Causes of Action Arose from Protected Speech or Petitioning Activities.*

The anti-SLAPP statute protects “any act . . . in furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue.” (§ 425.16, subd. (b)(1).) Such acts include “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)(2).) Thus, “statements, writings and pleadings in connection with civil litigation are covered by the anti-SLAPP statute, and that statute does not require any showing that the litigated matter concerns a matter of public interest. [Citations.]” (*Rohde v. Wolf* (2007) 154 Cal.App.4th 28, 35; see also *Rusheen, supra*, 37 Cal.4th at p. 1056 [protected activity under § 425.16 includes “communicative conduct such as the filing, funding, and prosecution of a civil action”].)

Here, the complaint alleged that Baozhen and respondent committed fraud and breached an agreement not to file claims against Yanghua’s estate when Baozhen (1) nominated Gong Hua as the administrator of Yanghua’s estate and (2) filed an opposition -- via Gong Hua -- to appellant’s spousal property petition. However, the filing of nomination and opposition papers in a probate action are protected activities, as the papers are writings made in connection with an issue under consideration or review by a judicial body. (§ 425.16, subd. (e)(2); see also *Cabral v. Martins* (2009) 177 Cal.App.4th 471, 479-480 [initiation of

proceedings to probate estate and administer trust is protect activity under the anti-SLAPP statute].)

Appellant contends that respondent cannot rely on the alleged misconduct of Baozhen to bring the causes of action in the complaint within the scope of the anti-SLAPP statute. However, the causes of action in the complaint, based on Baozhen's alleged breaches of the release, were asserted against *both* respondent and Baozhen. Additionally, the complaint alleged that respondent and Baozhen acted as each other's agent or were co-conspirators. Thus, respondent was entitled to rely on the allegations in the complaint to assert that the causes of action were subject to the anti-SLAPP statute. (See § 425.16, subd. (b) [in determining whether causes of action arose from protected speech, a court considers "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based"].)

Moreover, respondent asserted -- and appellant does not contest -- that any liability on her part for fraud and breach of the release was based on her statements made during a deposition noticed by appellant in connection with a probate action. Testifying at a deposition is a protected activity, as it consists of statements made in connection with an issue under consideration by a judicial body (§ 425.16, subd. (e)(2); see also *Gallanis-Politis v. Medina* (2007) 152 Cal.App.4th 600, 612 [statements made in course of responding to discovery requests were protected by anti-SLAPP statute]; *Haight Ashbury Free Clinics, Inc. v. Happening House Ventures* (2010) 184 Cal.App.4th 1539, 1548 [statements urging a witness to give false deposition testimony were protected activity]).

Appellant contends that the causes of action in her complaint were not based on protected activity. Rather, appellant argues, they were based on “fraudulent statements . . . made by [respondent] and her mother in 2012 and 2013, with intent to deceive [appellant] out of \$250,000.” However, the primary conduct that allegedly caused injury to appellant occurred in the probate proceedings. (See *Mosier v. Southern Cal. Physicians Ins. Exchange* (1998) 63 Cal.App.4th 1022, 1045 [damage an element of fraud cause of action].) Thus, it was petition-related activities that gave rise to the asserted liability. (*Navellier, supra*, 29 Cal.4th at p. 92, italics omitted [“anti-SLAPP statute’s definitional focus is not the form of the plaintiff’s cause of action but, rather, the defendant’s activity that gives rise to his or her asserted liability -- and whether that activity constitutes protected speech or petitioning”].) Baozhen’s petitioning activity was not merely incidental to the causes of action in the complaint, but an indispensable element of appellant’s claim of fraud. In short, the causes of action in the complaint arose from protected activity. (See *id.* at pp. 89-90 [cause of action for fraud based on defendant’s alleged misrepresentations and omissions “in connection with the [R]elease” and “actions in signing the [R]elease” arose from protected speech or petitioning activity].)

Appellant’s reliance on *Castleman v. Sagaser* (2013) 216 Cal.App.4th 481 (*Castleman*); *City of Alhambra v. D’Ausilio* (2011) 193 Cal.App.4th 1301 (*City of Alhambra*); *Delois v. Barrett Block Partners* (2009) 177 Cal.App.4th 940 (*Delois*); *Applied Business Software, Inc. v. Pacific Mortgage Exchange, Inc.* (2008) 164 Cal.App.4th 1108 (*Applied Business Software*); and *Sonoma Foods, Inc. v. Sonoma Cheese Factory, LLC* (N.D. Cal. 2007) 634

F.Supp.2d 1009 (*Sonoma Foods*), is misplaced. In *Castleman*, plaintiffs sued their former attorney for breach of fiduciary duty and breach of the duty of loyalty, based in part on the attorney's use of their confidential information in litigation-related activity. (*Castleman, supra*, 216 Cal.App.4th at pp. 487-488.) The appellate court determined that the causes of action did not arise from protected activity within the meaning of the anti-SLAPP statute. Although protected petitioning activity featured "prominently in the factual background," the "foundation of each claim is the allegation that [the attorney] chose to align himself with respondents' adversaries, in direct opposition to respondents' interests, thereby breaching duties of loyalty and confidentiality owed to them." (*Id.* at pp. 491, 493.) Here, in contrast, the protected petitioning activity was an essential element of the fraud causes of action.

In *City of Alhambra*, the City and the defendant entered into a settlement agreement, in which the defendant agreed that as consideration for the settlement payments and other benefits from the City, he would not "represent, participate, or advocate for, any Alhambra employee(s)" "in any matter involving the CITY and/or its agents or employees." Subsequently, the City learned that appellant had engaged in activities that it believed breached those provisions, found in section 3.8 of the settlement agreement. The City sued appellant and sought declaratory relief. In the declaratory relief action, it was alleged that an "actual controversy has arisen and now exists" between the parties "concerning their respective rights and duties' under section 3.8 of the settlement agreement." (*Id.* at p. 1304.) The appellate court concluded that "the City's declaratory relief claim d[id] not arise from appellant's protected activities, but from an

actual, present controversy between the parties regarding the scope and enforceability of section 3.8 of the settlement agreement.” (*Id.* at p. 1307.) The court noted: “While appellant’s protected speech activities may have alerted the City that an actual controversy existed regarding the legality of section 3.8, the speech itself does not constitute the controversy.” (*Id.* at p. 1308.) In contrast, here, appellant did not assert a declaratory relief action and the causes of action were based on protected activity. (Cf. *Vivian v. Labrucherie* (2013) 214 Cal.App.4th 267, 274 [where plaintiff’s claim was not for declaratory relief to determine the disputed meaning of the settlement agreement, but for damages based on defendant’s having allegedly breached the agreement by making statements to sheriff’s internal affairs investigator and in family court papers, action was “based on” protected activity and comes within the scope of § 425.16].)

Similarly, *Delois*, *Applied Business Software* and *Sonoma Foods* are distinguishable because in those cases, the activity constituting breach of the settlement agreement or release was not itself protected speech or petitioning activity. (See *Delois*, *supra*, 177 Cal.App.4th at pp. 948-949, 953 [landlord breached settlement agreement by assessing renter almost \$15,000 and not returning rental deposit or other rent payable under agreement]; *Applied Business Software*, *supra*, 164 Cal.App.4th at p. 1118 [defendant breached settlement agreement by failing to provide certification called for in agreement and using plaintiff’s software after time set out in settlement agreement for ceasing use of it]; *Sonoma Foods*, *supra*, 634 F.Supp.2d at p. 1018 [claims for fraud and breach of contract were based on defendant’s alleged failure to assign retail trademarks as defendant had promised].) In contrast, here, the activities giving rise to the fraud causes of

action are protected activities. (Cf. *Mundy v. Lenc* (2012) 203 Cal.App.4th 1401, 1409 [where “filing of a lawsuit . . . resulted in the breach of a settlement agreement and general release,” plaintiff’s breach of contract claim arose from protected activity].)

In sum, respondent met her burden to show that the causes of action in the complaint were subject to the anti-SLAPP statute and arose from activities protected under the statute. The burden thus shifted to appellant to demonstrate that her claims had at least minimal merit. (See *Navellier, supra*, 29 Cal.4th at p. 93 [“applying the anti-SLAPP statute to an action based, as this one is, on alleged breach of a release does not take away from the releasee the constitutional right to petition the court to redress legitimate grievances. As our emerging anti-SLAPP jurisprudence makes plain, the statute poses no obstacle to suits that possess minimal merit.”].)

B. *Appellant did not Show a Probability of Success on the Merits of her Fraud Claims.*

The complaint alleged that respondent falsely represented that in exchange for \$250,000, the members of the Xi Birth Family would not assert any claims on Yanghua’s estate or appellant’s properties or assets, and there would be no further financial entanglement between the parties. On the record before the trial court, there was insufficient evidence to support a prima facie case for fraud. As to respondent’s own conduct, appellant did not identify any act by which respondent asserted a claim on Yanghua’s estate or appellant’s properties and assets. As to acts of other members of the Xi Birth Family, the nomination of Gong Hua as administrator of Yanghua’s estate was not an assertion of a claim on the estate, as the administrator’s duty is to distribute the assets according to court order. (See *Estate of Muhammad*

(1971) 16 Cal.App.3d 726, 735 [executors are mere stakeholders of the estate, which they are to deliver to the persons designated by the court]; see also *Luckhardt v. Mooradian* (1949) 92 Cal.App.2d 501, 516 [“Legally an executor is not the owner of the assets of the estate he is administering. Title is in the legatees and devisees subject to possession by the executor.”].) Likewise, the opposition to appellant’s spousal property petition was not a claim on an asset, as the denial of the petition would have resulted only in the real properties remaining decedent’s separate property.

Additionally, appellant’s prima facie fraud case failed for lack of a showing of knowledge of falsity or justifiable reliance. (See *Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324, 1331, italics omitted [“The essential allegations for an action in fraud or deceit are false representation as to a material fact, knowledge of its falsity, intent to defraud, justifiable reliance and resulting damage.”].) The complaint does not allege how respondent knew, at the time she made her representations, that the Xi Birth Family intended to assert claims on Yanghua’s estate. (*Ibid.* [complaint failed to state a cause of action for fraud because it failed to plead with specificity “a factual basis for how [defendant] ‘knew’ the representations she communicated . . . were false”].) Moreover, appellant cannot demonstrate justifiable reliance. Appellant acknowledged that she was aware that the Xi Birth Family was litigious and not trustworthy. Furthermore, the release expressly applied only to debts between appellant and respondent, not debts between appellant and other members of the Xi Birth Family. (“I do not owe her. She does not owe me either. She and I do not owe each other.”) Finally, there was no evidence that respondent had been

authorized to represent or had previously represented the entire Xi Birth Family in matters involving Yanghua. Indeed, appellant was aware that respondent had previously been sued by her own siblings. Thus, it was not reasonable to rely on respondent's representation, and a signed release signed only by her, as binding the entire Xi Birth Family. In short, appellant did not demonstrate a probability of prevailing on her causes of action. Accordingly, the trial court properly granted the anti-SLAPP motion.

DISPOSITION

The order is affirmed. Respondent is awarded her costs on appeal.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.