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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MOSTAFAVI LAW GROUP,

Plaintiff and Appellant,

v.

MARYAM ERSHADI et al.,

Defendants and Respondents.

B285672

(Los Angeles County  
Super. Ct. No. BC663158)

APPEAL from an order of the Superior Court of Los Angeles County, Gail R. Feuer, Judge. Affirmed.

Mostafavi Law Group, Amir Mostafavi for Plaintiff and Appellant.

Nehoray & Drake, Mac E. Nehoray for Defendants and Respondents.

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In an attorney's collection action against his former clients, the clients cross-complained for fraud and breach of contract, alleging the attorney misrepresented his labor law expertise when negotiating the retention agreement and conducted settlement negotiations with the opposing party in order to drive up fees. The attorney moved to strike the cross-complaint as a strategic lawsuit against public participation (SLAPP), arguing his actions in negotiating the retention agreement and entering into settlement negotiations were taken in furtherance of his rights of petition and free speech. The trial court denied the motion on the ground that the attorney's representation of the former clients was not protected activity. We affirm.

### **BACKGROUND**

In 2014, the Mostafavi Law Group, Amir Mostafavi principal (individually and collectively Mostafavi), represented Maryam Ershadi and Ebrahim Moshiri in an action involving workers' compensation and wage and hour claims brought by a former employee. In 2017, Mostafavi sued Ershadi and Moshiri for breach of contract, alleging they breached the attorney-client fee agreement in the underlying action.

Ershadi and Moshiri cross-complained for breach of contract and fraud, alleging the following:

“Cross-Complainants hired Cross-Defendant Mostafavi to represent them in a defense of a Labor Case based on the representation by Cross-Defendant that he [Amir Mostafavi, the principal of Mostafavi Law Group] was an expert in the field of Labor Law with many years of experience. Cross-Defendant also agreed and assured Cross-Complainants that he would not in any way enter into any settlement negotiations with the other side. [¶] Cross-Defendant further represented to the Cross-

Complainant that because he was an expert in Labor Law . . . , Cross-Complainants' attorney fees would be somewhere between \$5000 to \$7500 as Cross-Defendant had all the research and templates needed to effectively defend this matter without spending much time on it.

"Cross-Defendant was to perform legal service beneficial to Cross-Complainant in exchange for compensation.

"Cross-Defendant failed to provide services beneficial to Cross-Complainant as promised.

"Cross-Complainants were damaged because they paid for services not beneficial to them in the amount of \$30,000.

"Cross-Defendant is not an expert in the field of Labor Law. As a matter of fact, Cross-Defendant had only been an attorney for 2 years at the time I retained him. Cross-Defendant engaged in settlement negotiations with the other side in order to increase the attorney fees."

Mostafavi specially moved to strike the cross-complaint pursuant to the anti-SLAPP statute, Code of Civil Procedure section 425.16 (hereafter section 425.16), arguing its representation of Ershadi and Moshiri in the underlying action constituted protected petitioning activity within the meaning of the anti-SLAPP statute because it occurred in connection with an issue under consideration by a judicial body.

Ershadi and Moshiri opposed the anti-SLAPP motion, arguing Mostafavi's work in the underlying action was not protected activity.

The trial court found that the cross-complaint arose from Mostafavi's holding itself out as a labor law expert during retention negotiations, and in its conducting settlement negotiations solely to drive up attorney fees, neither of which

activities were protected by the anti-SLAPP law. Accordingly, the court denied Mostafavi's anti-SLAPP motion.

Mostafavi timely appealed.

### **DISCUSSION**

Mostafavi argues that because statements it made during retention negotiations and in settlement negotiations were made in connection with an issue under review by a judicial body, they were protected petitioning activity under the anti-SLAPP law. We disagree.

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

A "special motion to strike under section 425.16 involves a two-step process. First, the moving defendant must make a prima facie showing 'that the act or acts of which the plaintiff complains were taken "in furtherance of the [defendant]'s right of petition or free speech under the United States or California Constitution in connection with a public issue," as defined in the statute.' " (*City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 420.) "If the defendant makes this initial showing of protected

activity, the burden shifts to the plaintiff at the second step to establish a probability it will prevail on the claim.” (*Ibid.*)

We independently review whether a moving party has made a threshold showing that the challenged cause of action arises from protected activity. (*Grewal v. Jammu* (2011) 191 Cal.App.4th 977, 988.)

A former client’s action against an attorney is not subject to the anti-SLAPP statute merely because the former representation was associated with petitioning activity by the attorney on the client’s behalf.

In *Freeman v. Schack* (2007) 154 Cal.App.4th 719, two clients sued their former attorney (Schack) based on allegations that Schack had agreed to represent them in litigation but thereafter breached the agreement by abandoning them to represent adverse interests in the same and different litigation. (*Id.* at pp. 723-725.) The attorney moved to strike the complaint under the anti-SLAPP statute, arguing that “ ‘all of the conduct alleged in the Complaint arose out of petitioning activity, to-wit, it all relates to the two underlying class actions.’ ” (*Id.* at p. 726.) The appellate court held that although “[t]here is no doubt plaintiffs’ causes of action have as a major focus Schack’s” litigation activities, “the fact plaintiffs’ claims are related to or associated with Schack’s litigation activities is not enough. ‘Although a party’s litigation-related activities constitute “act[s] in furtherance of a person’s right of petition or free speech,” it does not follow that any claims associated with those activities are subject to the anti-SLAPP statute.’ ” (*Id.* at pp. 729-730; see *Kolar v. Donahue, McIntosh & Hammerton* (2006) 145 Cal.App.4th 1532, 1537-1540 [client’s malpractice claim against former attorney not subject to anti-SLAPP merely because the

attorney's conduct occurred as part of litigation]; *Jespersen v. Zubiate-Beauchamp* (2003) 114 Cal.App.4th 624, 630-632 [same]; *Benasra v. Mitchell Silberberg & Knupp LLP* (2004) 123 Cal.App.4th 1179, 1187-1190 [client's breach of fiduciary duty claim against former attorney not subject to anti-SLAPP merely because the attorney's conduct occurred in the context of litigation].) "It is 'the *principal thrust* or *gravamen* of the plaintiff's cause of action that determines whether the anti-SLAPP statute applies [citation], and when the allegations referring to arguably protected activity are only incidental to a cause of action based essentially on nonprotected activity, collateral allusions to protected activity should not subject the cause of action to the anti-SLAPP statute.'" (*Freeman v. Schack, supra*, at p. 727; see also *United States Fire Ins. Co. v. Sheppard, Mullin, Richter & Hampton LLP* (2009) 171 Cal.App.4th 1617, 1626-1629 [claim against former attorney based on alleged conflict of interest not subject to anti-SLAPP].)

For actions to occur "in connection with" the proceedings as contemplated by section 425.16 they must relate to the substance of the issue under consideration in those proceedings and further the actor's right of petition or free speech in them. Although attorney retention negotiations may in a sense be "connected" with judicial proceedings involving the client, they in no way relate to the substance of an issue under review in the proceedings or further the attorney's petition or free speech rights in them. If they did, then every communication between an attorney and a client who is or may become involved in judicial proceedings would constitute an exercise of the attorney's petition and free speech rights, and every lawsuit for malpractice

would be required to undergo a second-prong anti-SLAPP analysis. No principle or authority supports such a proposition.

Here, Mostafavi's statements to his then-prospective clients during retention negotiations neither related to the substance of the underlying litigation for which he was to be retained nor furthered his petition or free speech rights in that litigation. And although statements he made in settlement negotiations to an opposition party were related to the substance of the litigation, his demanding payment from his clients for those statements was only tangentially related to the litigation, and furthered none of his petitioning rights.

Accordingly, we conclude the actions forming the gravamen of Ershadi and Moshiri's cross-complaint were not committed "in connection with" judicial proceedings within the meaning of section 425.16. Therefore, the trial court properly denied Mostafavi's anti-SLAPP motion without requiring that his former clients demonstrate a probability of prevailing.

#### **DISPOSITION**

The order denying Mostafavi's special motion to strike is affirmed. Respondents are to recover their costs on appeal.

NOT TO BE PUBLISHED.

CHANNEY, Acting P. J.

We concur:

BENDIX, J.

CURREY, J.<sup>\*</sup>

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