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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

DAVID THOMAS PARKER, Plaintiff and Respondent, v. TRIDER CORPORATION, Defendant and Appellant.	B271998 (Los Angeles County Super. Ct. No. BC600067)

APPEAL from an order of the Superior Court of Los Angeles County, Debre Katz Weintraub, Judge. Affirmed in part and reversed in part.

The Duringer Law Group, Stephen C. Duringer and Edward L. Laird II for Defendant and Appellant.

Fruchter & Sgro, W. Randall Sgro and Andrew P. Altholz for Plaintiff and Respondent.

David Thomas Parker (Parker) owned the Il Ghiotto restaurant in Fullerton, California. Parker and his mother Ruth Anne Griffin (Griffin) leased the premises from the Trider Corporation (Trider) and signed the lease as tenants. After they failed to pay rent on the property for several months, Trider filed an unlawful detainer action against Parker and Griffin. Trider unsuccessfully attempted to serve Parker and Griffin with a complaint and summons at the restaurant location. Trider then sought and received a court order allowing the company to serve Parker and Griffin by posting. Parker and Griffin failed to appear in unlawful detainer action and a default judgment was subsequently entered in the case.

More than four and a half years after entry of the default judgment, Parker filed suit against Trider, alleging that Trider had submitted a fraudulent application when seeking authorization to serve by posting. According to Parker, the court order granting the application was thus invalid and Trider never properly served Griffin. Therefore, Parker contends, the default judgment subsequently entered against Griffin must be set aside.

Trider filed a motion to strike Parker's complaint pursuant to Code of Civil Procedure[1] section 425.16, the anti-SLAPP statute. The trial court granted Trider's motion in part, striking Parker's prayer for monetary damages and

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

attorney fees but denied the motion as to the remaining allegations in the complaint. We hold that the motion to strike should have been granted in full. Trider has made a prima facie showing the challenged causes of action arose from protected activity and that Parker has failed to demonstrate a probability of prevailing on his claims.

BACKGROUND

I. Parker's Complaint

On January 20, 2011, Trider filed an unlawful detainer action against Parker, Griffin, and Il Ghiotto Restaurants, Inc.[2] The action was based on the non-payment of rent for the Il Ghiotto restaurant, which was located at 136 E. Commonwealth Avenue in Fullerton, California.[3] From January 20, 2011, to January 22, 2011, Trider attempted to serve Parker and Griffin with a complaint and summons at the restaurant location. On January 20, 2011, Trider's process server arrived at 1:21 p.m. and 8:12 p.m. but the restaurant was closed, the mail was overflowing, and no one was available for service. On January 21, 2011, Trider's process server arrived at 9:30 a.m. and 5:45 p.m. Although the restaurant was closed when the process server arrived at 9:30 a.m., the mail which had been overflowing the day

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[2] Parker is the Trustee of the Ruth Anne Griffin Revocable Living Trust (the Trust). The Trust was created on December 11, 2007, and became irrevocable upon Griffin's death on October 26, 2011.

[3] The restaurant's rent was $5,000 a month and was past due in the amount of $72,966.

before was now gone. No one was available for service. When the process server arrived at 5:45 p.m., the restaurant was still closed and no one was available for service. On January 22, 2011, Trider's process server arrived at 10:52 a.m. Once again, the restaurant was closed and no one was available for service.

After five unsuccessful attempts to serve Parker and Griffin at the restaurant, Trider applied to the court for an order to serve the complaint and summons by posting. The court issued the requested order on January 27, 2011.[4] Parker and Griffin failed to appear and the court entered a

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[4] Under section 415.45, subdivision (a)(1), a summons in an unlawful detainer action "may be served by posting if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in any [other] manner specified in this article" excluding publication. If the court makes this finding, "[t]he court shall order the summons to be posted on the premises in a manner most likely to give actual notice to the party to be served and direct that a copy of the summons and of the complaint be forthwith mailed by certified mail to such party at his last known address." (§ 415.45, subd. (b).) As discussed in greater detail below, reasonable diligence under section 415.45 does not require a landlord "to conduct an extensive investigation of all the possible whereabouts of its tenant before seeking the posting alternative." (*Board of Trustees of the Leland Stanford Junior University v. Ham* (2013) 216 Cal.App.4th 330, 338–339 (*Stanford*).)

default judgment in the amount of $104,897 on April 13, 2011.

On November 5, 2015—more than four years and six months after entry of the default judgment—Parker filed a complaint alleging four causes of action against Trider: (1) quiet title; (2) declaratory relief; (3) slander of title; and (4) void judgment—collateral attack. The complaint alleged Trider had improperly served Griffin and that the default judgment subsequently entered against her was thus void or voidable and subject to collateral attack. According to the complaint, when Trider attempted to serve Griffin at the restaurant location, the company already knew that the restaurant was vacant and that possession of the premises had been surrendered to Trider's employees or agents. Furthermore, the complaint alleged, Trider's employees or agents knew or should have known Griffin's home address but made no effort to serve her there.[5] Therefore, the application submitted by Trider when seeking an order to serve the complaint and summons by posting was "untruthful, mistaken, [based on] extrinsic fraud, and defective."

The subsequent default judgment led to the placement of an involuntary lien on Griffin's home, thus clouding title to and encumbering the property. The first cause of action sought to quiet title to the residence. The second cause of

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[5] At the time, Griffin lived at 571 E. 10th Street in Azusa, California. The Trust now owns this property.

action sought a declaration as to whether the default judgment against Griffin and lien on the residence was void or voidable. The second cause of action also sought an order expunging the lien against the residence. The third cause of action alleged that the default judgment against Griffin was void or voidable for lack of personal jurisdiction. The fourth cause of action alleged that the default judgment against Griffin was void or voidable "based on fraud, extrinsic fraud, mistake" and violated due process. In addition to seeking a judgment quieting title, a judgment of declaratory relief, and a judgment that the default judgment entered against Griffin was void or voidable, the complaint sought actual damages as well as attorney fees.

II. Trider's Motion to Strike

On December 30, 2015, Trider filed a motion to strike the complaint pursuant to section 425.16, the anti-SLAPP statute. Trider first contended that Parker lacked standing to challenge the judgment entered against Griffin. Parker was not the real party in interest. Nor could Parker show he had suffered actual injury as a result of the judgment entered against Griffin. Furthermore, although Parker claimed standing as a trustee, he had failed to comply with the requirements mandated by section 377.32.[6]

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[6] If a cause of action survives the death of a person entitled to commence it, that cause of action passes to the decedent's successor in interest and may be commenced by the decedent's personal representative or successor in interest. (§ 377.30.) A "decedent's successor in interest"

Trider also contended that the corporation was entitled to immunity under the litigation privilege.[7] Lastly, Trider argued that section 425.16 barred every cause of action in

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means the beneficiary of the decedent's estate or other successor in interest who succeeds to a cause of action or to a particular item of the property that is the subject of a cause of action. (§ 377.11.) However, a person who seeks to bring an action as the successor in interest, must execute and file an affidavit or declaration under penalty of perjury, stating (1) the decedent's name; (2) the date and place of decedent's death; (3) that no proceedings are pending in California for the administration of the decedent's estate; (4) either that the declarant is the decedent's successor in interest or is authorized to act on behalf of the successor in interest; and (5) that no other person has a superior right to commence the action or proceeding for the decedent. (§377.32, subd. (a).) If the decedent's estate was administered, the declarant must produce a "copy of the final order showing distribution of the decedent's cause of action to the successor in interest." (§ 377.32, subd. (a)(4).) A plaintiff who has not fulfilled the requirements of section 377.32 may not proceed in an action on a decedent's behalf. (*In re A.C.* (2000) 80 Cal.App.4th 994, 1002–1003.)

[7] The litigation privilege immunizes communications related to judicial proceedings from tort liability and bars such causes of action. (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 737.) The privilege is also " 'relevant to the second step in the anti-SLAPP analysis in that it may present a substantive defense a plaintiff must overcome to demonstrate a probability of prevailing.' " (*Rohde v. Wolf* (2007) 154 Cal.App.4th 28, 38.)

Parker's complaint. Trider could satisfy the first prong of the statute's two-part test because Parker's causes of action arose from acts in furtherance of Trider's right of petition or free speech. Secondly, Parker could not show a probability of prevailing on his claims.

On February 10, 2016, Parker filed an opposition to the motion to strike. In an attached declaration, Parker stated he was the owner of the Il Ghiotto restaurant. Griffin was his mother, he continued. She was not an employee of the restaurant and did not receive mail or reside at the restaurant's location. Instead, she was simply a guarantor on the restaurant's lease.[8] According to Parker, Trider was "very much aware" of Griffin's home address "as it was included in the lease" and thus could have very easily served her there.[9]

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[8] This claim is false. Both Parker and Griffin are clearly listed as tenants in the lease agreement. Nor does Parker's choice in nomenclature alter the outcome here—a guarantor of a lease is liable for its breach on the lessee's default and is not entitled to notice of the default. (*Baralat Development Co. v. Lichter* (1987) 191 Cal.App.3d 933, 936–937.)

[9] This claim is false. The lease does *not* list Griffin's home address. Nor does it list Parker's home address. Indeed, when signing the lease, Griffin left her address line blank, while Parker wrote in the restaurant's address. Notably, it was Trider that provided the trial court with the lease—not Griffin. The lease also contained a provision stating that each tenant was responsible for all obligations

On March 16, 2016, the trial court granted Trider's anti-SLAPP motion in part as to the prayer for relief for monetary damages and the prayer for attorney fees. The court denied the motion as to the remaining allegations in the complaint.[10]

DISUSSION

I. Standard of Review

Known as the anti-SLAPP statute, section 425.16 provides that a "cause of action against a person arising from

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under the lease whether or not in possession and that all notices would be directed to the restaurant's address. Indeed, before posting and mailing the unlawful detainer complaint and summons to the restaurant, Trider posted and mailed a notice to pay rent or quit—also known as a three-day notice—to the restaurant. Parker does not claim he failed to receive this notice. Nor is there evidence of any other lease, contract or side agreement in this case, let alone one that somehow ameliorates the clear language of the commercial lease agreement. Finally, we note that the unlawful detainer complaint and summons were personally served on W. Randall Sgro, the agent for service of process for Il Ghiotto Restaurants, Inc. and counsel on appeal.

[10] The trial court did not address Trider's standing argument in its minute order. Furthermore, neither party provided this court with a reporter's transcript of the hearing. Thus, we cannot determine if Trider truly abandoned its standing claim when arguing before the trial court, as Parker maintains. We need not decide the issue, however, given that we hold Parker's complaint should be have been stricken in its entirety.

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).)

Resolving an anti-SLAPP motion is a two-step process. First, the trial court must determine whether the defendant has made a prima facie showing that the challenged cause of action arises from protected activity. (*People ex rel. Fire Ins. Exchange v. Anapol* (2012) 211 Cal.App.4th 809, 822.) If the defendant makes that showing, the trial court proceeds to the second step, determining whether the plaintiff has shown a probability of prevailing on the claim. (*Ibid.*)

Subdivision (e) of section 425.16 delineates the type of speech or petitioning activity protected. Such acts include: "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in

connection with a public issue or an issue of public interest." (§ 425.16, subd. (e).)

Courts have not precisely defined the boundaries of a cause of action "arising from" such protected activity. (§ 425.16, subd. (b).) "[T]he statutory phrase 'cause of action . . . arising from' means simply that the defendant's act underlying the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech. [Citation.] In the anti-SLAPP context, the critical point is whether the plaintiff's cause of action itself was *based on* an act in furtherance of the defendant's right of petition or free speech." (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.)

Second, "[i]f 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*).) The plaintiff must do so with admissible evidence. (*Kreeger v. Wanland* (2006) 141 Cal.App.4th 826, 831.) "We decide this step of the analysis 'on consideration of "the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (§ 425.16, subd. (b).) Looking at those affidavits, " ' "[w]e do not weigh credibility, nor do we evaluate the weight of the evidence. Instead, we accept as true all evidence favorable to the plaintiff." ' " (*Burrill v. Nair* (2013) 217 Cal.App.4th 357, 378–379, disapproved on another point by *Baral*, *supra*, 1 Cal.5th at p. 396, fn. 11.)

This second step has been described as a " 'summary-judgment-like procedure.' " (*Baral*, *supra*, 1 Cal.5th at p. 384.) A court's second step "inquiry is limited to whether the [opposing party] has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. [The court] . . . 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.) "Only a [claim] that satisfies *both* prongs 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.)

"On appeal, we review the trial court's decision de novo, engaging in the same two-step process to determine, as a matter of law, whether the defendant met its initial burden of showing the action is a SLAPP, and if so, whether the plaintiff met its evidentiary burden on the second step." (*Tuszynska v. Cunningham* (2011) 199 Cal.App.4th 257, 266–267, disapproved on another point by *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1071.) As discussed below, we hold that Trider has made a prima facie showing that the challenged causes of action arise from protected activity and that Parker has failed to demonstrate a probability of prevailing on his claims.

II. First Step of Anti-SLAPP Analysis

Parker contends that Trider submitted a fraudulent application to serve the complaint and summons by posting

and that the court order granting the application was thus invalid. Therefore, Trider never properly served Griffin with the unlawful detainer complaint and the default judgment subsequently entered against Griffin must be set aside.[11]

At the outset, we note that Trider's application was clearly a "written or oral statement or writing made before a . . . judicial proceeding" under section 425.16. Nevertheless, "[a]ssertions that are 'merely incidental' or 'collateral' are not subject to section 425.16." (*Baral*, *supra*, 1 Cal.5th at p. 394.) Thus, "[a]llegations of protected activity that merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute." (*Ibid.*; see *Wallace v. McCubbin* (2011) 196 Cal.App.4th 1169, 1183 [alleged act is incidental to claim only if act is not alleged to be basis for liability], disapproved on another point in *Baral*, *supra*, 1 Cal.5th at p. 396, fn. 11.)

Consequently, at the first step of our analysis, we look simply to whether the claims involving protected activity are merely incidental or collateral to the causes of action, i.e., whether the allegations are merely background or provide

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[11] "[F]ulfilling the statutory requirements of service of process—i.e., service of a summons—is necessary to obtain personal jurisdiction over a party." (*Renoir v. Redstar Corp.* (2004) 123 Cal.App.4th 1145, 1150.) Consequently, " 'a default judgment entered against a defendant who was not served with a summons in the manner prescribed by statute is void.' " (*Sakaguchi v. Sakaguchi* (2009) 173 Cal.App.4th 852, 858.)

context or whether the allegations support a claim for recovery. (*Baral*, *supra*, 1 Cal.5th at p. 394.) Here, the allegations of each cause of action pertaining to protected activity are not merely incidental to Parker's alleged injuries. Within each cause of action, Parker alleges conduct by Trider that is based on protected activity and purports to support a claim for recovery. These are not allegations that merely provide context. Thus, the claims are subject to section 425.16.[12]

Accordingly, we conclude Trider made its threshold showing that Parker's claims arose from protected activity, shifting the burden to Parker to show a probability of prevailing on the merits of his claims.

III. Second Step of Anti-SLAPP Analysis

A. Unlawful Detainer Actions

At the outset, we note that unlawful detainer actions are unique proceedings that call for special procedures with respect to service of summons. (*Stanford*, *supra*, 216 Cal.App.4th at p. 336.) Section 415.45 specifically governs

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[12] In a declaration attached to his opposition to the motion to strike, Parker contends he detrimentally relied on a false statement made by Trider that the company would not be filing an unlawful detainer action. However, the application and order—not this alleged statement—led to service of summons by posting and the default judgment. Furthermore, "[w]hen relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded" during the first step of anti-SLAPP analysis. (*Baral*, *supra*, 1 Cal.5th at p. 396.)

service of summons in unlawful detainer actions. Pursuant to subdivision (a)(1) of the statute, a summons in an unlawful detainer action "may be served by posting if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in any [other] manner specified in this article" excluding publication. Unlike service by publication, the reasonable diligence required to justify service by posting under section 415.45 does not require an exhaustive investigation of the tenant's whereabouts. (See *Stanford*, *supra*, 216 Cal.App.4th at pp. 335, 338–339.)

"The purpose of the unlawful detainer statutes is to provide the landlord with a summary, expeditious way of getting back his property when a tenant fails to pay the rent or refuses to vacate the premises at the end of his tenancy." (*Nork v. Pacific Coast Medical Enterprises, Inc.* (1977) 73 Cal.App.3d 410, 413; see *Larson v. City and County of San Francisco* (2011) 192 Cal.App.4th 1263, 1297 [statute designed to provide "expeditious remedy" for recovery of possession of real property].) "This purpose is not served by a protracted inquiry into all sources of information regarding the tenant's location before posting and mailing at the one address of which the landlord is certain." (*Stanford*, *supra*, 216 Cal.App.4th at p. 339.)

Therefore, unlawful detainer actions operate on an expedited procedural track, different than that of limited civil actions, and "do not afford defendants all the procedural

advantages of ordinary disputes." (*Stanford*, *supra*, 216 Cal.App.4th at p. 339.) Not only is service of process subject to a different standard (§ 415.45), a defendant is given only five days in which to answer the complaint (§ 1167.3), and motions to quash service (§ 1167.4) as well as summary judgment motions (§ 1170.7) are handled on an expedited schedule. Trials must be set in an expedited manner, and continuances are both discouraged and limited. (§ 1170.5.)

In short, "[t]here are unique factual and legal characteristics of the landlord-tenant relationship that justify special statutory treatment inapplicable to other litigants." (*Lindsey v. Normet* (1972) 405 U.S. 56, 72.) "Many expenses of the landlord continue to accrue whether a tenant pays his rent or not. Speedy adjudication is desirable to prevent subjecting the landlord to undeserved economic loss and the tenant to unmerited harassment and dispossession when his lease or rental agreement gives him the right to peaceful and undisturbed possession of the property. Holding over by the tenant beyond the term of his agreement or holding without payment of rent has proved a virulent source of friction and dispute." (*Id.* at pp. 72–73.) Thus, in unlawful detainer actions, the denial of certain procedural rights which are enjoyed by litigants in ordinary actions is necessary to prevent frustration of summary proceedings. (See *Vasey v. California Dance Co.* (1977) 70 Cal.App.3d 742, 747.)

Here, as in *Stanford*, *supra*, 216 Cal.App.4th 330, the dispute involves the lengths to which a plaintiff must go in

exercising reasonable diligence under section 415.45. In *Stanford*, the Court of Appeal, Sixth District, rejected a tenant's claim that her landlord had failed to use reasonable diligence to locate her, even though the landlord had the tenant's cell phone number as well as her work supervisor's phone number and her sister's phone number and address. (*Id.* at pp. 338–339.) The landlord's process server attempted to personally serve the tenant with the summons at the subject property on May 6, May 7, May 9, May 10, and May 11, 2010, at various times. (The tenant had not provided any alternative addresses other than this address.) Having been unsuccessful at personal service, the landlord obtained a court order permitting it to serve the tenant by posting a copy of the summons and complaint at the premises and by mailing a copy to the tenant's " 'last known address.' " (*Id.* at p. 334.) The tenant did not receive the summons and complaint and the unlawful detainer action proceeded to a default judgment. (*Id.* at p. 335.) The Sixth District concluded that the landlord was justified in seeking service by posting and mailing under section 415.45 and that the trial court thus properly denied the tenant's motion to vacate the default judgment. (*Id.* at p. 341.)

Here, Parker and Griffin signed a lease which stated that all notices would be sent to the restaurant location and provided no alternative addresses. When multiple attempts to personally serve Parker and Griffin at the restaurant failed, Trider sought and received court approval to serve Parker and Griffin by posting and mailing under section

415.45. Thus, here, as in *Stanford*, the landlord was justified in seeking approval for this form of service.

Furthermore, once the statutory requirements of section 415.45 have been met, there is no basis to deem a subsequently-entered judgment void. (See *Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 495, 501; *Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 18l; *Giorgio v. Synergy Management Group, LLC* (2014) 231 Cal.App.4th 241, 249 [service by publication was proper; default judgment affirmed].) Consequently, Parker cannot demonstrate a probability of prevailing on his claims.

B. Extrinsic Fraud or Mistake

Under section 473, subdivision (b), a court "may, upon any terms as may be just, relieve a party . . . from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." However, Parker cannot claim relief from judgment pursuant to section 473 because the six-month jurisdictional time limit for granting such statutory relief has long since passed. (*Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 735 & fn. 3.) Where statutory relief is not available, a party can move for relief from a default judgment based on a trial court's inherent equity power to vacate a judgment obtained by extrinsic fraud or mistake. (*Id.* at p. 736.) Nevertheless, there is a strong public policy in favor of the finality of judgments. Consequently, relief from a judgment should be

granted only in exceptional circumstances. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981–982.)

To set aside a judgment based on extrinsic fraud or extrinsic mistake, the moving party must satisfy three elements: " 'First, the defaulted party must demonstrate that it has a meritorious case. Secondly, the party seeking to set aside the default must articulate a satisfactory excuse for not presenting a defense to the original action. Lastly, the moving party must demonstrate diligence in seeking to set aside the default once it had been discovered.' " (*Moghaddam v. Bone* (2006) 142 Cal.App.4th 283, 290–291, italics omitted.)

Diligence means the party seeking relief acted within a reasonable amount of time. (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 856–857.) Parker has not stated when he discovered a default judgment had been entered against Griffin or when he learned a lien had been recorded against Griffin's home. Thus, Parker has not alleged diligence in seeking to set aside the default. We are not required to examine his undeveloped claim. (See *Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, 984–985; *Tilbury Constructors, Inc. v. State Comp. Ins. Fund* (2006) 137 Cal.App.4th 466, 482; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785.)

C. Litigation Privilege

Parker's claims are also barred by the litigation privilege as codified in Civil Code section 47. A privileged publication or broadcast is one made in any judicial

proceeding. (Civ. Code, § 47, subd. (b).) The privilege confers absolute immunity to all torts except malicious prosecution, and applies to any communication (whether or not a publication, and whether inside or outside the courtroom) " 'required or permitted by law in the course of a judicial proceeding to achieve the objects of the litigation.' " (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1057.) Communications preparatory to or in anticipation of the bringing of an action or other official proceeding are also within the protection of the litigation privilege. (*Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255, 1268.)

" 'The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action.' " (*Rusheen v. Cohen*, *supra*, 37 Cal.4th at p. 1057) "[I]f the gravamen of the action is communicative, the litigation privilege extends to noncommunicative acts that are necessarily related to the communicative conduct," including acts necessary to enforce a judgment. (*Id.* at p. 1065.) "Any doubt as to whether the privilege applies is resolved in favor of applying it." (*Adams v. Superior Court* (1992) 2 Cal.App.4th 521, 529.) As noted above, the litigation privilege is " 'relevant to the second step in the anti-SLAPP analysis in that it may present a substantive defense a plaintiff must overcome to demonstrate a

probability of prevailing.' " (*Rohde v. Wolf*, *supra*, 154 Cal.App.4th at p. 38.)

At the outset, we note that the application to serve the complaint and summons by posting was not false; it plainly sets out the steps taken to serve Parker and Griffin at the restaurant location. Indeed, there is nothing fraudulent within the four corners of the application.[13] Rather, Parker contends that service should have been attempted at a different location—a location other than the one expressly specified in the lease as the notice address. It is unclear how this alleged failure renders the application fraudulent.

Moreover, the application satisfies the requirements of the litigation privilege. Parker contends that the privilege has no application here because it only shields "tortious conduct against tort causes of action, not collateral attacks on a judgment." On close analysis, however, the gravamen of the action was not the actual default judgment, but the procurement of the judgment based on the use of allegedly fraudulent declarations of service. Because these declarations were communications "(1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical

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[13] Although Parker has also cited Trider's allegedly false statement that the company would not file an unlawful detainer action, he does not explain how the statement caused him to ignore mail received at the restaurant or induced him not to respond to the summons.

relation to the action" (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212), the litigation privilege applies here. (See *id.* at p. 214.; *Rusheen v. Cohen*, *supra*, 37 Cal.4th at p. 1062.)

Consequently, Parker cannot show a probability of prevailing on the merits of his claims under the anti-SLAPP statute.[14] (See *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 926–927 [because plaintiff's defamation action was barred by section 47, plaintiff could not demonstrate probability of prevailing under anti-SLAPP statute]; *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 783–785 [because defendant's prelitigation communication was privileged, trial court did not err in granting motion to strike under anti-SLAPP statute].)

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[14] Although Civil Code section 47 and Code of Civil Procedure section 425.16 are not substantively the same and do not serve the same purpose, (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 323–324), in this instance, the bar imposed by the litigation privilege also bars Parker's claims under the anti-SLAPP statute.

DISPOSITION

The order is affirmed as to the portion of the order granting the motion and reversed as to the remaining allegations. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.