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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

SIMONA FARRISE, as Trustee, etc.,  
et al.,

Plaintiffs and Appellants,

v.

ROSARIO BACON BILLINGSLY et al.,

Defendants and Respondents.

B281367

(Los Angeles County  
Super. Ct. No. BC625392)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael Raphael, Judge. Affirmed.

Farrise Law Firm and Simona A. Farrise; Sharon J. Arkin for Plaintiffs and Appellants.

Klinedinst, Heather L. Rosing, Earll M. Pott, and Betsy S. Kimball for Defendants and Respondents.

Plaintiff and appellant Simona Farrise (Simona),<sup>1</sup> as trustee of the KSBLAND Trust (the Trust), and individually as a beneficiary of the Trust, appeals from the judgment entered in favor of defendants and appellants Rosario Bacon Billingsley (Billingsley), Andrew Billingsley, and the Law Offices of Rosario Bacon Billingsley (collectively, defendants) after the trial court granted defendants' special motion to strike, pursuant to Code of Civil Procedure section 425.16,<sup>2</sup> all of the causes of action asserted against them. We affirm the judgment.

## **BACKGROUND**

### **The parties**

Simona and her former spouse, Kimberley Farrise, are trustees and beneficiaries of the Trust. The Trust's corpus consists of the couple's community property, including residential real property located at 1601 Alisa Lane in Santa Barbara, California (the property). Defendants were Kimberley's attorneys in an underlying marital dissolution action filed by Simona.

### **The underlying dissolution action**

Simona petitioned for dissolution of her marriage to Kimberley in October 2014. On February 4, 2016, Simona and Kimberley stipulated to the appointment of a temporary judge for all purposes, retired Santa Clara Superior Court Judge Catherine A. Gallagher.

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<sup>1</sup> Because Simona Farrise and her former spouse, Kimberley Farrise, share the same surname, we refer to them by their first names in order to avoid confusion.

<sup>2</sup> All further statutory references are to the Code of Civil Procedure unless stated otherwise. A motion brought pursuant to section 425.16 is commonly referred to as an anti-SLAPP motion. SLAPP is an acronym for a strategic lawsuit against public participation.

Judge Gallagher issued an order on March 21, 2016, addressing the sale of the property. The order states that both parties agreed that the property should be sold and directs the parties' respective counsel to submit the names of three proposed realtors. The order further states that "[t]he Court will then select a realtor to list the property."

In April 2016, Judge Gallagher issued a stipulated order (the April 2016 order), signed by Simona and Kimberley, appointing Richard Van Seenus of Sotheby's International Realty (Sotheby's or the realtors) to sell the property. The April 2016 order directs Simona and Kimberley to "work together in good faith" to promptly execute the listing agreement and to make decisions about the listing price, necessary repairs, and the staging of the property. The April 2016 order also states that the court will retain jurisdiction to resolve disputes between the parties.

Simona and Kimberley executed a residential listing agreement with Sotheby's on April 29, 2016. Shortly thereafter, a dispute arose between Simona and the realtors over the estimated sales price for the property and whether the realtors were responsible for the cost of cleaning, repairing, and staging the property for sale. In a series of email exchanges with the realtors, Simona questioned the validity of the listing agreement and asserted that Judge Gallagher expected the realtors to advance the costs of cleaning, repairing, and staging the property.

The realtors forwarded the email exchanges with Simona to Billingsley, who then emailed Simona's attorney, Jeff Riebel, asking Riebel to advise Simona that the listing agreement remained in full force and effect and that the April 2016 order did not require the realtors to advance any maintenance or repair costs for the property.

In a telephonic proceeding before Judge Gallagher on June 24, 2016, Billingsley informed the court about the exchanges that had occurred between the realtors and Simona and that Simona had accused the realtors of breaching their fiduciary duty. Billingsley also reported that the realtors wished to resign as listing agents for the property. The court gave the parties 10 days to find another listing agent and reserved the issue as to whether sanctions should be imposed on Simona for materially interfering with the April 2016 order.

### **The instant lawsuit**

Simona filed the instant action against defendants, Kimberley, the realtors, and others<sup>3</sup> in June 2017. Billingsley thereafter filed a motion to be relieved as counsel for Kimberley in the dissolution action, and the realtors resigned from their position as listing agent for the property.

Simona's complaint alleges 10 causes of action against defendants: (1) inducing breach of contract (fifth cause of action), (2) intentional interference with contractual relations (sixth cause of action), (3) intentional interference with prospective economic relations (seventh cause of action), (4) negligent interference with prospective economic relations (eighth cause of action), (5) general negligence (ninth cause of action), (6) negligent undertaking (11th cause of action), (7) intentional misrepresentation (13th cause of action), (8) negligent misrepresentation (14th cause of action), (9) conspiracy (16th cause of action), and (10) defamation (17th cause of action).

### **The anti-SLAPP motion**

Defendants filed an anti-SLAPP motion, arguing that all of the causes of action against them arose from acts in furtherance of the right of petition and that Simona could not establish a

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<sup>3</sup> Defendants and Simona are the only parties to this appeal.

probability of prevailing on her claims. In support of their motion, defendants submitted Billingsley's declaration and other documentary evidence.

Simona opposed the anti-SLAPP motion, arguing that her claims against defendants arose not from protected petitioning activity, but from Billingsley's allegedly wrongful conduct in interfering with the listing agreement and the sale of the property. Simona further argued that she could establish a probability of prevailing on her claims. Simona's opposition was supported by her own declaration and by other documentary evidence.

Following a December 16, 2016 hearing, the trial court granted defendants' anti-SLAPP motion in its entirety. Judgment was entered in defendants' favor, and this appeal followed.

## **DISCUSSION**

### **I. Applicable law and standard of review**

Section 425.16, subdivision (b)(1) provides in relevant part: "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." Subdivision (e)(3) of section 425.16 defines an "act in furtherance of a person's right of petition or free speech under the United States Constitution or California Constitution in connection with a public issue" to include "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 (e)(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.”

Determining whether the statute bars a given cause of action requires a two-step analysis. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88 (*Navellier*)). First, the court must decide whether the party moving to strike a cause of action has made a threshold showing that the cause of action “aris[es] from any act . . . in furtherance of the [moving party’s] right of petition or free speech.” (§ 425.16, subd. (b)(1); *Navellier*, at p. 88.) If the court finds that a defendant has made the requisite threshold showing, the burden then shifts to the plaintiff to demonstrate a “probability that the plaintiff will prevail on the claim.” (§ 425.16, subd. (b)(1); *Navellier*, at p. 88.) In order to demonstrate a probability of prevailing, a party opposing a special motion to strike under section 425.16 ““must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.” [Citation.]” (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 741 (*Jarrow*), fn. omitted.)

A trial court’s order granting a special motion to strike under section 425.16 is reviewed de novo. (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 999.)

## **II. Protected Activity**

An act in furtherance of a person’s right of petition or free speech within the meaning of section 425.16 includes any written or oral statement in writing made before a judicial proceeding, or “any . . . statement or writing made in connection with an issue under consideration . . . by a . . . judicial body, or any other official proceeding authorized by law.” (§ 425.16, subds. (e)(1), (2).)

An attorney-defendant may invoke the protections of the anti-SLAPP statute when he or she is sued for communicative conduct when representing clients in litigation. (See, e.g., *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056 (*Rusheen*) [anti-SLAPP statute protects “communicative conduct such as the filing, funding, and prosecution of a civil action,” including such acts when “committed by attorneys in representing clients in litigation”]; *Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 671-672 [attorneys’ opposition to administrative agency’s efforts to appoint receiver for client protected by anti-SLAPP statute].) “Under the plain language of section 425.16, subdivision (e)(1) and (2), as well as the case law interpreting those provisions, all communicative acts performed by attorneys as part of their representation of a client in a judicial proceeding or other petitioning context are per se protected as petitioning activity by the anti-SLAPP statute. [Citation.]” (*Cabral v. Martins* (2009) 177 Cal.App.4th 471, 479-480 (*Cabral*).)

In deciding whether a defendant has satisfied the initial burden of establishing that the challenged acts arise from protected activity under section 425.16, a court considers “the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.” (§ 425.16, subd. (b).) (*Navellier, supra*, 29 Cal.4th at p. 89.) Examination of the pleadings, declarations, and documentary evidence submitted in this case shows that each of the causes of action asserted against defendants is premised upon their representation of Kimberley in connection with the marital dissolution action, a protected activity under section 425.16.

All of the causes of action asserted against defendants are based on communications between Billingsley and the realtors or Simona’s divorce attorney about subjects that are within the

scope of the April 2016 order -- e.g., the sale of the property, the listing agreement, and Sotheby's appointment as the listing agent for the property. Each of the causes of action against defendants incorporates allegations that Billingsley "undertook and did engage with" the realtors "by telephone or other direct contact" regarding the listing agreement; communicated with the realtors "via telephone, electronic mail, facsimile, text messaging or other methods of communications" regarding the property or "the terms, requirements, or legal obligations of the listing contract;" and that Billingsley's allegedly illegal communications "included intentional and negligent misrepresentations" about the listing agreement and the realtors obligations thereunder. All of challenged communications constitute petitioning activity that is protected under section 425.16. (*Cabral, supra*, 177 Cal.App.4th at pp. 479-480.)

Simona argues that Billingsley's communications were not protected under the anti-SLAPP statute because Billingsley was not counsel for the Trust, a separate entity that was the owner of the property and the contracting party under the listing agreement, and because the Trust was not joined as a party in the underlying dissolution action. That argument, however, is incorrect. A trust is not a legal entity, but simply a collection of assets and liabilities. (*Stoltenberg v. Newman* (2009) 179 Cal.App.4th 287, 293.) Legal title to property owned by a trust is held by the trustees. (*Ibid.*) "[A] trust is not a legal person which can own property or enter into contracts. . . . [I]t is the trustee or trustees who hold title to the assets that make up the trust estate and who enter into contracts necessary to the management of the estate. . . ." (*Greenspan v. LADT LLC* (2010) 191 Cal.App.4th 486, 521.) As counsel for Kimberley, a co-trustee who held title to the property, Billingsley's communications with the realtors and Simona's attorney about the listing agreement



and the sale of the property constituted petitioning activity protected under the anti-SLAPP statute. (*Cabral, supra*, 177 Cal.App.4th at pp. 479-480.)

Simona contends the allegations of protected activity in her complaint merely provide context for and are incidental to her causes of action. Simona further contends that her claims against defendants are premised on nonprotected conduct -- interfering with the listing agreement and inducing the realtors to breach the agreement and their fiduciary duties thereunder, and that to the extent the complaint alleges both protected activity and nonprotected activity, only the claims based on protected activity may be dismissed. The gravamen of each of the causes of action asserted against defendants, however, is Billingsley's allegedly wrongfully communication with the realtors and with Simona's attorney about the listing agreement, the sale of the property, and the April 2016 order mandating the sale of the property and directing Simona and Kimberley to enter into the listing agreement. All of the challenged conduct is protected petitioning activity under the anti-SLAPP statute. (*Rusheen, supra*, 37 Cal.4th at p. 1056; *Cabral, supra*, 177 Cal.App.4th at pp. 479-480.)

The cases Simona cites in support of her position are inapposite. *In re Marriage of Perry* (1997) 58 Cal.App.4th 1104 concerned a deceased parent's child support obligations. The court in that case ordered the trustee of the deceased parent's trust to pay child support obligations out of property held by the trust. (*Id.* at p. 1107.) The court in *Sprengel v. Zbylut* (2015) 241 Cal.App.4th 140 reaffirmed the long-established principle that a legal malpractice action is not subject to a special motion to strike under the anti-SLAPP statute. The instant case involves neither a claim against trust assets nor a legal malpractice claim by a former client.

The causes of action asserted against defendants are all based on communications by Billingsley about matters that are the subject of the April 2016 order. Defendants accordingly met their threshold burden of demonstrating that the causes of action asserted against them arise from protected petitioning activity under the anti-SLAPP statute.

### **III. Reasonable probability of prevailing**

#### ***A. General principles***

Because the trial court correctly concluded that Simona's claims against defendants arise from conduct that is protected under the anti-SLAPP statute, we must now determine whether Simona met her burden of demonstrating a probability of prevailing on the merits. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) To satisfy this burden, "the plaintiff must 'state[] and substantiate[] a legally sufficient claim.' [Citation.] 'Put another way, the plaintiff "must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.'" [Citation.]" (*Jarrow, supra*, 31 Cal.4th at p. 741, fn. omitted.) In doing so, the court considers the pleadings and evidentiary submissions of both the plaintiff and the defendant. (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821.)

Although "the court does not *weigh* the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim.' [Citation.] In making this assessment it is 'the court's responsibility . . . to accept as true the evidence favorable to the plaintiff . . . ' [Citation.] The plaintiff need only establish that his or her claim has 'minimal merit' [citation] to avoid being stricken as a SLAPP. [Citations.]"

(*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 291.) The plaintiff, however, “cannot rely on the allegations of the complaint, but must produce evidence that would be admissible at trial. [Citation.]” (*Integrated Healthcare Holdings, Inc. v. Fitzgibbons* (2006) 140 Cal.App.4th 515, 527.)

***B. The litigation privilege***

“The litigation privilege, codified at Civil Code section 47, subdivision (b), provides that a ‘publication or broadcast’ made as part of a ‘judicial proceeding’ is privileged. . . . ‘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 [has] some connection or logical relation to the action.’ [Citation.]” (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1241 (*Action*).) The privilege is absolute and “is not limited to statements made during a trial or other proceedings, but may extend to steps taken prior thereto, or afterwards. [Citation.]” (*Rusheen, supra*, 37 Cal.4th at p. 1057.)

“Because the litigation privilege protects only publications and communications, a ‘threshold issue in determining the applicability’ of the privilege is whether the defendant’s conduct was communicative or noncommunicative. [Citation.] The distinction between communicative and noncommunicative conduct hinges on the gravamen of the action. [Citations.] That is, the key in determining whether the privilege applies is whether the injury allegedly resulted from an act that was communicative in its essential nature. [Citations.]” (*Rusheen, supra*, 37 Cal.4th at p. 1058.)

The principal purpose of the litigation privilege is to afford litigants and witnesses freedom of access to the courts without fear of a subsequent derivative tort action. (*Silberg v. Anderson*

(1990) 50 Cal.3d 205, 213.) In order to achieve this purpose, courts have given the litigation privilege a broad interpretation (*Action, supra*, 41 Cal.4th at p. 1241), and have applied the privilege to immunize defendants from tort liability for intentional inducement of breach of contract (*Rosenthal v. Irell & Manella* (1982) 135 Cal.App.3d 121); intentional interference with prospective economic advantage (*ibid.*); and negligence (*Pettit v. Levy* (1972) 28 Cal.App.3d 484.)

Simona argues that the causes of action asserted against defendants are predicated on Billingsley's conduct, -- e.g., inducing breach of contract, or intentionally and negligently interfering with contractual or prospective economic relations -- and not her communications. The conduct alleged, however, is communicative in its essential nature. All of the causes of action are premised on allegations that Billingsley acted illegally by (1) communicating "her legal advice" regarding the property, the listing agreement, or the court order appointing the realtors as listing agents for the property; (2) communicating with the realtors "by telephone," "direct contact," "electronic mail, facsimile, text messaging or other methods of communications" about the property or "the terms, requirements, or legal obligations of the listing contract;" and (3) emailing Simona's attorney in the dissolution action about the validity of the listing agreement and the scope of the April 2016 order appointing Sotheby's as the listing agent.

It is undisputed that Billingsley was Kimberley's attorney in the underlying dissolution action, that the April 2016 order mandated the sale of the property, appointed Van Seenus and Sotheby's as the listing broker, and required the parties to promptly execute a listing agreement for the property. It is also undisputed that Judge Gallagher retained jurisdiction to resolve any disputes related to the listing agreement or the sale of the

property. Simona presented no evidence to defeat the litigation privilege, which bars each of the causes of action asserted in her complaint. There is no direct evidence, nor is there sufficient evidence to support an inference that Billingsley's communications with the realtors or with Simona's attorney were made for any purpose other than listing and selling the property in accordance with the April 2016 order. While certain of Simona's causes of action allege "other" unspecified "illegal acts and negligent undertakings" by Billingsley, these allegations are unsupported by any facts or evidence.

Simona claims that Billingsley's communications regarding the Trust's property were excepted from the litigation privilege because the Trust was not a party to the underlying dissolution action. No such blanket exception exists. The California Supreme Court has made clear that no "broad exception [exists] to the litigation privilege for any party who did not participate in the underlying litigation." (*Action, supra*, 41 Cal.4th at p. 1247.) The Supreme Court explained that "[a]n exception to the litigation privilege for all suits brought by parties who were not involved in the underlying litigation would be antithetical to the privilege's purposes." (*Ibid.*)

Each and every cause of action in the complaint is premised on the same allegedly wrongful conduct by Billingsley -- communicating with the realtors and with Simona's attorney about the April 2016 order mandating the sale of the property, appointing Sotheby's as the listing broker, or the validity and terms of the listing agreement that was the subject of the April 2016 order. The challenged communications, made in connection with a judicial proceeding in order to comply with a court order mandating the listing and sale of the property, are protected by the litigation privilege. (Civ. Code, § 47, subd. (b); *Rusheen, supra*, 37 Cal.4th at p. 1062.) The privilege is absolute and bars

every cause of action asserted against defendants in Simona's complaint. (*Rubin v. Green* (1993) 4 Cal.4th 1187, 1193.) Simona failed to establish a reasonable probability of prevailing, and the trial court did not err by granting the anti-SLAPP motion.

**DISPOSITION**

The judgment is affirmed. Defendants are awarded their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
ASHMANN-GERST