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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

DUSTIN LEMING,

Plaintiff and Appellant,

v.

SEPHORA USA et al.,

Defendants and Appellants.

B279677

(Los Angeles County
Super. Ct. No. BC615671)

APPEAL from a judgment of the Superior Court of Los Angeles County, John P. Doyle, Judge. Affirmed.

Lewis Brisbois Bisgaard & Smith, Raul L. Martinez, and Cary L. Wood for Plaintiff and Appellant Dustin Leming.

O'Neil & Matusek and Henry John Matusek II for Defendants and Appellants Sephora USA and Breezy Gaxiola.

Plaintiff Dustin Leming sued defendants Sephora USA and Breezy Gaxiola for negligence and intentional tort after Leming was arrested and charged with allegedly committing a battery against Gaxiola while he was a customer at a Sephora store. The trial court partially granted and partially denied a special motion to strike brought by the defendants pursuant to Code of Civil Procedure section 425.16.¹ The court granted the motion to strike the claim based on the defendants' alleged involvement in having Leming criminally prosecuted, but denied the motion to strike the claim based on the defendants' alleged citizen's arrest of Leming. Both parties appeal the trial court's order. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. The Complaint

On April 1, 2016, Leming filed a civil complaint against Sephora USA, a retail company that sells beauty products, and Gaxiola, an employee of Sephora. The complaint alleged that, on April 4, 2015, Leming visited a Sephora store located in the Northridge Fashion Center to seek professional makeup advice. When Leming approached Gaxiola for assistance, she refused to provide him with service. Gaxiola then falsely reported to an unnamed store manager that Leming had physically struck her. The store manager confronted Leming and accused him of hitting Gaxiola. Leming denied the allegation and requested the store manager review the in-store surveillance video. The manager refused and expelled Leming from the store.

¹ Unless otherwise stated, all further statutory references are to the Code of Civil Procedure.

The complaint also alleged that, after Leming left the store without incident, Gaxiola and/or the store manager contacted the mall security service at the Northridge Fashion Center, falsely reported Leming had struck Gaxiola, and requested Leming “be detained for a citizen’s arrest.” The mall security officers placed Leming in handcuffs and detained him for about an hour until the police arrived and took Leming into custody based “on the citizen’s arrest” of Gaxiola and the store manager.

The complaint further alleged that Leming “was booked and held in jail for more than 6 hours before he was released.” He was then “criminally prosecuted by the State of California based upon the knowingly false claims and reports of Gaxiola.” After several hearings, the charges against Leming were dismissed when surveillance video footage proved no battery had occurred. The complaint alleged that the actions of Gaxiola in knowingly making false accusations against Leming, and the actions of store manager in ratifying the false accusations by refusing to examine the video evidence, caused Leming to suffer emotional, physical, and economic harm.

II. The Special Motion to Strike

In response to Leming’s complaint, Sephora and Gaxiola filed a special motion to strike pursuant to section 425.16. They argued Leming’s claims arose from constitutionally protected activity because they were based on the communicative acts of Gaxiola and the store manager in reporting Leming’s alleged battery of Gaxiola to the police and the prosecutor. They further asserted Leming could not show a probability of success on the merits of his action because each of his claims was barred by the litigation privilege of Civil Code section 47.

In his opposition to the motion, Leming contended his claims did not arise from protected activity because they were not based on any communications that the defendants may have had with a government agency, but rather were based on their non-communicative act of placing Leming under a citizen's arrest. Leming did not argue in his opposition that he could establish a probability of prevailing on the merits of his action, nor did he offer any evidence to support his alleged claims.

The trial court granted in part, and denied in part, the special motion to strike. The court concluded that the actions of Gaxiola and the store manager in performing a citizen's arrest of Leming did not constitute protected activity, and thus, Leming's claim based on a false citizen's arrest was not subject to section 425.16. However, the court concluded that the employees' involvement in having Leming jailed and criminally prosecuted following the citizen's arrest did constitute protected activity as communications or reports to the police. The court further concluded that, as to the claim based on false police reports, Leming had not shown a probability of success on the merits because he failed to submit any evidence to establish a prima facie case, and the claim would be barred by the litigation privilege. The court granted the special motion to strike the claim based on Leming being jailed and criminally prosecuted, and denied the motion to strike the claim based on Leming being subjected to a citizen's arrest.

Following the trial court's ruling, Sephora and Gaxiola filed an appeal from the order partially denying their special motion to strike, and Leming filed a cross-appeal from the order partially granting the motion.

DISCUSSION

I. Overview of Section 425.16

Section 425.16, often referred to as the anti-SLAPP statute,² provides, in pertinent part, that “[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 or 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).) Section 425.16 must be “construed broadly” to effectuate the statute’s purpose, which is to encourage participation in matters of public significance and to ensure that such participation is not chilled through an abuse of the judicial process. (§ 425.16, subd. (a).)

Resolution of a section 425.16 special motion to strike requires a two-step process. “First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. [Citation.] If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success. . . . The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment.” (*Baral v. Schnitt* (2016) 1

² SLAPP is an acronym for “Strategic Lawsuit Against Public Participation.” (*Jarrow Formulas, Inc., v. LaMarche* (2003) 31 Cal.4th 728, 732, fn. 1.)

Cal.5th 376, 384-385.) We review the trial court’s ruling de novo, conducting an independent review of the entire record. (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1067 (*Park*); *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.)

A claim arises from protected activity within the meaning of section 425.16 if the conduct of the defendant on which the claim is based was an act in furtherance of the defendant’s right of petition or free speech. (*Park, supra*, 2 Cal.5th at pp. 1062-1063; see also *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78 [“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”]; *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89 [“critical consideration is whether the cause of action is *based* on the defendant’s protected free speech or petitioning activity”].) “[T]he mere fact that an action was filed after protected activity took place does not mean the action arose from that activity for the purposes of [section 425.16].’ [Citations.] Instead, the focus is on determining what ‘the defendant’s activity [is] that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning.’ [Citation.]” (*Park, supra*, at p. 1063.)

Section 425.16 describes four categories of conduct that constitute protected activity: “(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; (4) or 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).)

The term “cause of action,” as used in section 425.16, refers “to claims for relief that are based on allegations of protected activity.” (*Baral v. Schnitt, supra*, 1 Cal.5th at p. 396.) A special motion to strike brought pursuant to section 425.16 need not challenge the entirety of a count as pleaded in a complaint, but rather may be used to attack distinct claims for relief within a pleaded count. (*Id.* at pp. 392-394.) Accordingly, where a cause of action includes allegations of both protected and unprotected activity, “the plaintiff is required to establish a probability of prevailing on any claim for relief based on allegations of protected activity. Unless the plaintiff can do so, the claim and its corresponding allegations must be stricken.” (*Id.* at p. 395.)

II. Defendants’ Appeal from the Order Partially Denying the Special Motion to Strike

In ruling on the section 425.16 motion brought by Sephora and Gaxiola, the trial court denied the motion to strike the claim based on the alleged false arrest of Leming. Relying on *Wang v. Hartunian* (2003) 111 Cal.App.4th 744 (*Wang*), the trial court concluded that the conduct of Sephora and Gaxiola in performing a citizen’s arrest did not constitute protected activity under section 425.16, and thus, Leming’s claim based on such arrest was not subject to a special motion to strike. On appeal, Sephora and Gaxiola argue that the trial court erred in partially denying their motion because *Wang* was wrongly decided, and contrary to

the holding in that case, a citizen's arrest is protected by section 425.16 as an act in furtherance of the right of petition.

“A private person may arrest another . . . [f]or a public offense committed or attempted in his [or her] presence.” (Pen. Code, § 837, subd. (1).) “A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him or her to a peace officer.” (Pen. Code, § 847, subd. (a).) “[W]hile a person falsely arrested by a citizen ordinarily has no remedy against the peace officer who took him into custody as a result of the arrest, he has a tort remedy against the offending citizen” for false imprisonment. (*Kesmodel v. Rand* (2004) 119 Cal.App.4th 1128, 1137 (*Kesmodel*).) False arrest is a species of false imprisonment, and “is premised upon a violation of the personal liberty of another accomplished without lawful authority.” (*Ibid.*) “The tort of false imprisonment consists of unlawful restraint or confinement, and the cause of action arises immediately on the commission of the wrongful act.” (*Johnson v. Ralphs Grocery Co.* (2012) 204 Cal.App.4th 1097, 1104.)

In *Wang*, the Court held that claims based on a false citizen's arrest do not arise from protected activity under section 425.16. (*Wang, supra*, 111 Cal.App.4th at p. 746.) The parties in *Wang* were two neighbors involved in a property dispute. After obtaining a restraining order against the plaintiff, the defendant called the police to report that the plaintiff was in violation of the order. When the police inquired whether the defendant wished to make a citizen's arrest, the defendant signed a Private Person's Arrest form pursuant to which the plaintiff was arrested and detained. The plaintiff thereafter sued the defendant for false arrest and imprisonment, and the trial court granted the

defendant's section 425.16 special motion to strike the complaint. (*Id.* at pp. 746-747.) The appellate court reversed, concluding the defendant's conduct in arresting the plaintiff was not protected activity under section 425.16. (*Id.* at p. 746.) In reaching this conclusion, the court drew a distinction between situations where the police make an arrest based on a citizen's report of a crime and those where the citizen makes the arrest. The court reasoned that, had the defendant merely reported the plaintiff's actions to the police and the police arrested the plaintiff after conducting an investigation based on that report, the defendant's communications with the police leading to the arrest might constitute protected activity. (*Id.* at p. 749.) However, "[t]he line between communication and conduct was crossed when [the defendant] arrested [the plaintiff] and caused the police officers to take [the plaintiff] into custody." (*Id.* at pp. 751-752.) The court concluded that the defendant's conduct in performing a citizen's arrest was not an act in furtherance of his right of petition or free speech, and thus, he failed to satisfy his threshold burden of showing that the plaintiff's claims arose from constitutionally protected activity. (*Id.* at p. 752.)

Applying the reasoning in *Wang*, this Court reached a similar conclusion in *Kesmodel*, *supra*, 119 Cal.App.4th 1128. The parties in *Kesmodel* were tenants in an apartment building. The plaintiff sued the defendants for false imprisonment after they claimed he was a "peeping Tom" and placed him under a citizen's arrest. The matter was tried to a jury, which found in the plaintiff's favor. The defendants appealed, arguing that the litigation privilege of Civil Code section 47 immunized them from liability because their act of signing a citizen's arrest form was a petition to the police to take official action against the plaintiff.

(*Id.* at p. 1131.) In concluding that a citizen's arrest was not a communicative act protected by the litigation privilege, this Court distinguished the situation in which a citizen merely provides information to the police about suspected criminal activity from the situation in which a citizen actively assists the police in making a false arrest. (*Id.* at p. 1136.) This Court reasoned: "Had the [defendants] only informed the officers of [the plaintiff's] alleged criminal activity in order to prompt [the plaintiff's] arrest, and had the officers, after conducting an investigation based on the [defendants'] report, arrested [the plaintiff], the [defendants'] activity would be protected from liability under [Civil Code] section 47(b). However, the evidence in this case shows something far more than pure communication with the officers, i.e., conduct beyond just a report of the alleged crime to the police. The evidence shows after [the officer] stated she would not arrest [the plaintiff] based on the [defendants'] report of his allegedly peering into [the] bedroom window, the [defendants] made a citizens' arrest of [the plaintiff] themselves. [¶] . . . The [defendants'] noncommunicative act of arresting [the plaintiff] was conduct and thus not privileged under [Civil Code] section 47(b)." (*Id.* at pp. 1136-1137.)

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Cal.App.4th 418 (*Buchanan*) also held that a citizen's arrest is not a privileged communication under Civil Code section 47. The plaintiff in *Buchanan* was a customer in the defendant's store. He sued the store for false imprisonment and invasion of privacy after the store's security guard placed him under a citizen's arrest for refusing to leave the premises to accommodate a celebrity couple. (*Id.* at pp. 421-422.) The trial court sustained the defendant's demurrer without leave to amend on the ground

that the litigation privilege of Civil Code section 47 barred the plaintiff's action. (*Id.* at p. 423.) Relying on *Wang*, the appellate court reversed, concluding that the actions of the store personnel in effecting a citizen's arrest of the plaintiff and then taking him out into the parking lot in handcuffs were not communicative in nature. (*Id.* at p. 424.) The *Buchanan* court explained: "The facts as alleged are that [the defendant's] personnel were telling the deputies nothing more than that they wanted [the plaintiff] out of the store and that, when he refused to leave, [the defendant's security guard], and not the deputies, arrested [the plaintiff]. This was conduct on the part of [the defendant], and not communication." (*Id.* at pp. 425-426.)

In this case, Leming's complaint included a claim for relief based upon the alleged conduct of Sephora and Gaxiola in subjecting him to a false citizen's arrest. The complaint specifically alleged that, after Leming left Sephora's store without incident, Gaxiola and/or the store manager "contacted the Security Service for Northridge Fashion Center and falsely reported to them that [Leming] had struck Gaxiola, and requested [Leming] be detained for a citizen's arrest." The complaint further alleged that, after mall security officers placed Leming in handcuffs and detained him, "Los Angeles police officers arrived and took [Leming] into custody on the citizen's arrest" of Gaxiola and the store manager. Like the plaintiffs in *Wang*, *Kesmodel*, and *Buchanan*, Leming did not merely assert that the defendants reported his alleged criminal activity to the police, who conducted an investigation based on such report and placed him under arrest. Rather, Leming alleged that the defendants themselves made a citizen's arrest by requesting that mall security detain Leming and then delivering him to the police

to be taken into custody. We agree with the holding in *Wang* that a defendant's conduct in making a citizen's arrest is not an act in furtherance of the defendant's right of petition or free speech, and therefore, does not constitute protected activity within the meaning of section 425.16.

In arguing that a citizen's arrest is protected activity under section 425.16, Sephora and Gaxiola assert that *Wang* was wrongly decided. They specifically contend that *Wang*'s analysis was incorrectly predicated on whether a citizen's arrest was protected by the litigation privilege of Civil Code section 47, and failed to consider whether such conduct constituted petitioning activity under section 425.16. This argument lacks merit. Although the protections afforded by the two statutes are not identical, courts repeatedly have recognized the relationship between section 425.16 and the litigation privilege. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 322; *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1121.) Indeed, courts often "have looked to the litigation privilege as an aid in construing the scope of section 425.16, subdivision (e)(1) and (2) with respect to the first step of the two-step anti-SLAPP inquiry—that is, by examining the scope of the litigation privilege to determine whether a given communication falls within the ambit of subdivision (e)(1) and (2)." (*Flatley v. Mauro*, *supra*, at pp. 322-323; see also *Navellier v. Sletten* (2003) 106 Cal.App.4th 763, 770 [litigation privilege "informs interpretation of the 'arising from' prong of the anti-SLAPP statute"].)

Contrary to the defendants' characterization, *Wang* did not conflate the litigation privilege with section 425.16. Instead, the appellate court in *Wang* properly considered analogous case law on the litigation privilege in construing the scope of section

425.16. The court also made clear that its “first task” in conducting the two-step inquiry required by section 425.16 was to “determine whether making a citizen’s arrest was an act in furtherance of [the] right of petition or free speech under the state or federal constitutions.” (*Wang, supra*, 111 Cal.App.4th at p. 748.) *Wang* concluded that a citizen’s arrest was not an act in furtherance of the right of petition or free speech, and *Kesmodel* properly relied on that decision in holding that a citizen’s arrest was not a communicative act protected by the litigation privilege. (*Kesmodel, supra*, 119 Cal.App.4th at pp. 1137-1138.)

Sephora and Gaxiola also assert that *Wang* was erroneously decided because it failed to recognize that section 425.16 “is on its face broader than the litigation privilege in expressly reaching noncommunicative conduct.” In support of this argument, they cite to subdivision (e)(4) of the statute, which defines protected activity as including “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)(4).) It is well-established, however, that “[c]lauses (3) and (4) of section 425.16, subdivision (e), concerning statements made in public fora and ‘other conduct’ implicating speech or petition rights, include an express ‘issue of public interest’ limitation.” (*Briggs v. Eden Council for Hope & Opportunity, supra*, 19 Cal.4th at p. 1117; accord, *Moore v. Shaw* (2004) 116 Cal.App.4th 182, 196 “[u]nlike the first two clauses of section 425.16, subdivision (e), which do not have an ‘issue of public interest’ limitation . . . , clauses (3) and (4) do include such a limitation”].) Accordingly, to constitute protected activity under section 425.16, subdivision (e)(4), the conduct “must have taken place “in

connection with a public issue or an issue of public interest.” [Citation.]’ [Citation.]” (*Old Republic Construction Program Group v. The Boccardo Law Firm, Inc.* (2014) 230 Cal.App.4th 859, 874; see also *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1132 [“the third and fourth categories of conduct that fall within section 425.16 are subject to the limitation that the conduct must be in connection with an issue of public interest”].) Because there is no contention that the conduct of Sephora and Gaxiola in making a citizen’s arrest involved an issue of public interest, they cannot show that such conduct fell within the scope of section 425.16, subdivision (e)(4).

Sephora and Gaxiola further contend that a citizen’s arrest constitutes protected activity under section 425.16 because it is designed to prompt an investigation by the police or prosecutor to determine whether criminal charges should be brought against the person arrested. However, similar arguments were rejected in *Wang*, *Kesmodel*, and *Buchanan*, which, as discussed, drew a distinction between a report to the police of suspected criminal activity and a citizen’s arrest. While the intent in both situations is to prompt action by government officials, the “line between communication and conduct” is crossed when the citizen makes the arrest and causes the police to take the arrestee into custody. (*Kesmodel*, *supra*, 119 Cal.App.4th at p. 1138; *Wang*, *supra*, 111 Cal.App.4th at pp. 751-752.) False imprisonment by means of a citizen’s arrest is an independent, non-communicative act.

We also reject the defendants’ argument that the gravamen of Leming’s false arrest claim was not the physical act of restricting his freedom, but rather the communication of false information to the police resulting in his arrest and prosecution. The pleaded causes of action in Leming’s complaint included

allegations of both protected activity (communications with the police and/or prosecutor) and unprotected activity (a citizen's arrest). With respect to the allegations of unprotected activity, the complaint alleged that, prior to any communications with law enforcement officials, the defendants falsely reported to mall security that Leming had struck Gaxiola and requested that he "be detained for a citizen's arrest." As a result, Leming was "placed . . . in handcuffs," removed "against his will," and kept "in an administrative detention" by mall security until the police arrived and took him into custody.

Leming's complaint thus included a claim for relief based on the independent, non-communicative act of making a citizen's arrest. Because a citizen's arrest is not an act in furtherance of the right of petition or free speech, Sephora and Gaxiola failed to satisfy their threshold burden of showing that the claim arose from protected activity under section 425.16. The trial court therefore properly denied the special motion to strike Leming's claim for relief based on the defendants' alleged false arrest.³

III. Leming's Appeal from the Order Partially Granting the Special Motion to Strike

Leming cross-appeals from the trial court's order partially granting the defendants' special motion to strike. Leming argues the trial court erred in striking the allegations in his complaint concerning the defendants' involvement in having him jailed and

³ Because the defendants did not carry their burden under the first step of the section 425.16 analysis with respect to Leming's false arrest claim, we need not address whether Leming demonstrated a probability of prevailing on the merits of such claim under the second step.

criminally prosecuted for the alleged battery against Gaxiola. Leming asserts those allegations were merely collateral to his claim based on a false citizen's arrest, and thus, were not subject to section 425.16. We see no error in the trial court's ruling.

In addition to asserting a claim for relief based on the defendants' alleged conduct in making a citizen's arrest, Leming's complaint included allegations that he was "held in jail for more than 6 hours before he was released," and "was criminally prosecuted by the State of California based upon the knowingly false claims and reports of Gaxiola." The complaint further alleged that Gaxiola "made the false accusations against" Leming "knowing said allegations would cause [him] harm," and that the "willful acts of the defendants" caused Leming to suffer harm, including "expenses incurred to appear in court to clear his name of the false charges against him." While not a model of clarity, these allegations in the complaint reasonably could be read as asserting a separate claim for relief based on defendants' alleged statements to the police or prosecutor after Leming was taken into custody and charged with battery.

As discussed above, a citizen's communications with law enforcement officials concerning alleged criminal activity on the part of another person can constitute protected activity under section 425.16, provided that the actions of the citizen do not cross the line into non-communicative conduct such as a citizen's arrest. (*Wang, supra*, 111 Cal.App.4th at pp. 749-751; see also *Chabak v. Monroy* (2007) 154 Cal.App.4th 1502, 1511-1512 [statements to the police reporting an alleged crime were protected activity under section 425.16].) In his cross-appeal, Leming argues that, like the plaintiffs in *Wang* and *Kesmodel*, he was harmed by the defendants' non-communicative conduct in

effecting a citizen's arrest, rather than by any statements the defendants may have made to law enforcement. However, in both *Wang* and *Kesmodel*, the plaintiff was not charged with a crime after he was placed under a citizen's arrest and taken into custody. (*Wang, supra*, at p. 746 [after the plaintiff was released, "no further action was taken against him"]; *Kesmodel, supra*, 119 Cal.App.4th at p. 1334 ["district attorney declined to prosecute and the case was dismissed"].) The citizen's arrest accordingly was the sole cause of the plaintiff's alleged harm. In this case, however, Leming's complaint alleges that, following his arrest, he was criminally prosecuted "based upon the knowingly false claims and reports of Gaxiola," and that he suffered harm in having to "appear in court to clear his name of the false charges against him." It thus appears the allegations concerning Gaxiola's communications with the prosecutor or the police do not merely provide context for Leming's false arrest claim, but rather are part of the basis for the defendants' alleged liability.

Because Leming's claim based on the defendants' alleged communications with law enforcement officials arises from protected activity under section 425.16, the burden shifted to Leming to demonstrate a probability of prevailing on the merits of his claim. It is undisputed that Leming did not submit any evidence to support his claims in opposing the defendants' special motion to strike, and Leming does not contend on appeal that he has proven that the challenged claim is legally sufficient or factually substantiated. The trial court therefore did not err in striking Leming's claim for relief based on the defendants' alleged false reports of criminal activity to law enforcement officials.

DISPOSITION

The trial court's order granting in part, and denying in part, the defendants' section 425.16 special motion to strike is affirmed. The parties shall bear their own costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

WILEY, J.*

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