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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MEHRDAD DARDASHTI,

Cross-complainant and
Respondent,

v.

MAHYAR DARDASHTI,

Cross-defendant and Appellant.

B276297

(Los Angeles County
Super. Ct. No. BC591322)

APPEAL from an order of the Superior Court of Los Angeles County, Stephanie M. Bowick, Judge. Reversed.

Chamberlin & Keaster, Robert W. Keaster, and David M. Berke for Cross-defendant and Appellant.

Keiter Appellate Law and Mitchell Keiter for Cross-complainant and Respondent.

INTRODUCTION

This case involves a family dispute over the transfer of a piece of real property located at 1001 Hillcrest Road, Beverly Hills, California (the Hillcrest property). Feridoun Dardashti is the father of appellant Mahyar Dardashti and respondent Mehrdad Dardashti.¹ On March 26, 2015, title to the Hillcrest property was transferred from the Feridoun family trust to Mehrdad's family trust. Subsequently, Feridoun filed a quiet title action, seeking to void the transfer on the basis of fraud. Respondent Mehrdad then filed a cross-complaint against his father Feridoun and his brother Mahyar. The cross-complaint alleged that in 2012, Feridoun had agreed to transfer the Hillcrest property to Mehrdad. However, it alleged, Mahyar wrongfully persuaded Feridoun to repudiate the 2012 agreement and challenge the 2015 transfer of the Hillcrest property. The cross-complaint stated a claim against Feridoun for specific performance of the 2012 agreement, and a claim against Mahyar for intentional interference with contract.

Mahyar filed a special motion to strike the intentional interference claim under Code of Civil Procedure section 425.16 (anti-SLAPP motion).² After the trial court denied the anti-SLAPP motion, Mahyar appealed. He contends that (1) the trial court erred in determining that the claim was not based on conduct protected under the anti-SLAPP statute; and (2) the court erred in determining that even if based on protected

¹ Because the parties share the same last name, we refer to them by their first name for clarity.

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

activity, Mehrdad could demonstrate the claim had minimal merit. For the reasons set forth below, we reverse the order denying the anti-SLAPP motion.

FACTUAL BACKGROUND & PROCEDURAL HISTORY

A. Complaint and Cross-complaint

On August 14, 2015, Feridoun filed a verified complaint seeking a judgment quieting title in the Hillcrest property in favor of Feridoun's family trust and against Mehrdad's. In the complaint, Feridoun asserted that he did not intend to transfer title of the Hillcrest property to Mehrdad, and that he did not sign the March 26, 2015 grant deed transferring title. The complaint alleged that the 2015 grant deed was actually executed and recorded by Mehrdad "in furtherance of a fraudulent scheme" and was therefore "void."

On April 6, 2016, Mehrdad filed a cross-complaint against Feridoun and Mahyar. The cross-complaint alleged that Mehrdad and Feridoun were partners in a business that generated millions of dollars in profit between 1985 and 1994. Although they had agreed to divide the profits equally, Feridoun allegedly received substantially more than 50 percent of the profits, which he used to purchase real property, including the Hillcrest property. "In 2012, Feridoun, [his wife] and [Mehrdad] entered into a written agreement in partial consideration for the prior years of unequal profit distributions. . . . The agreement provided, among other things, that [Mehrdad] would receive the Hillcrest Property and Feridoun would receive \$700,000 from [Mehrdad]." The cross-complaint further alleged that Mehrdad paid the \$700,000, and in 2015, Feridoun -- through Mehrdad, his attorney-in-fact -- executed the grant deed transferring the Hillcrest property.

The cross-complaint alleged that even prior to the 2012 Agreement, appellant Mahyar had expressed “his belief that he was being treated unfairly by the family” with respect to his share of the family assets and income. It further alleged: “Over the past year, Mahyar, knowing that Feridoun has suffered a substantial and dramatic loss of cognitive ability and that Feridoun is vulnerable to undue influence, has wrongfully persuaded Feridoun to repudiate the 2012 Agreement and challenge transfer of the Hillcrest Property.” “As a result of Mahyar’s conduct, Feridoun has disavowed performance under the 2012 Agreement[.]. Mahyar has even convinced Feridoun to file and prosecute a quiet title action against [Mehrddad] with regard to the Hillcrest Property” The cross-complaint alleged that Mahyar brought Feridoun to “a lawyer of Mahyar’s choosing” to file the quiet title action, and that he “has repeatedly prevented Feridoun from receiving medical care related to his diminished capacity[,], fearing that a qualified physician would find that Feridoun lacks capacity to maintain his action.”

B. *Anti-SLAPP Motion*

On May 16, 2016, Mahyar filed his special motion to strike the cause of action for intentional interference with contract. Mahyar argued that the claim was based on his alleged encouragement and facilitation of Feridoun’s quiet title action; that such conduct was protected petitioning activity under the anti-SLAPP statute; and that the cross-complaint was thus a SLAPP. Mahyar further argued that Mehrddad could not demonstrate a probability of prevailing on the merits at trial, as the litigation privilege set forth in Civil Code section 47, subdivision (b), immunized Mahyar’s conduct from tort liability.

In opposition, Mehrdad argued that his claim against Mahyar was not a SLAPP. Mehrdad conceded that his cross-complaint included allegations of both potentially protected activity (Mahyar convincing Feridoun to file a quiet title action) and clearly unprotected activity (undue influence). He contended, however, that the claim against Mahyar was not a SLAPP, because even had Feridoun not filed the quiet title action, he (Mehrdad) could have stated a claim against Mahyar by alleging that Mahyar “was improperly influencing and abusing [Feridoun] so that he could avoid his contractual obligations, all to [Mahyar’s] personal benefit.” Mehrdad also argued that even if his claim against Mahyar was based on protected activity, he could demonstrate minimal merit. He asserted that there was ample evidence to raise a triable issue whether Feridoun “has been subjected to [Mahyar’s] undue influence and related conduct.”

In reply, Mahyar argued that the intentional interference claim was based on protected activity, as the alleged unprotected activity (undue influence) was merely incidental to the alleged protected activity (convincing Feridoun to file the quiet title action). Mahyar further contended that Mehrdad had not demonstrated the claim had minimal merit, as Mehrdad failed to offer any evidence or argument showing the litigation privilege did not apply.

C. *Trial Court’s Ruling*

On June 24, 2016, the trial court denied the anti-SLAPP motion. It determined that the intentional interference claim against Mahyar was not based on the filing of Feridoun’s quiet title action, but on Mahyar’s alleged undue influence over Feridoun, “the result of which [was] Feridoun’s disavowal of the

2012 agreement.” It further determined that even if the claim was based on protected activity, there was sufficient evidence to show “there is at least minimal merit to Mehrdad’s allegations of undue influence.” It ruled that “while the litigation privilege may apply to communications made by Mahyar in furtherance of the quiet title action, it is not clear that it would apply to other actions taken by Mahyar,” such as preventing Feridoun from receiving medical care.

Mahyar timely appealed.

DISCUSSION

“A SLAPP suit -- a strategic lawsuit against public participation -- seeks to chill or punish a party’s exercise of constitutional rights to free speech and to petition the government for redress of grievances. [Citation.] The Legislature enacted . . . section 425.16 -- known as the anti-SLAPP statute -- to provide a procedural remedy to dispose of lawsuits that are brought to chill the valid exercise of constitutional rights. [Citation.]” (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055-1056.) “Resolution of an anti-SLAPP motion involves two steps. 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.” (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384 (*Baral*).) Only a cause of action that satisfies both parts of the anti-SLAPP statute -- i.e., that arises from protected speech or petitioning and lacks even minimal merit -- is a SLAPP, subject to being stricken under the statute. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89 (*Navellier*).) “We review a trial court’s decision on a special motion to strike de

novo.” (*Colyear v. Rolling Hills Community Assn. of Rancho Palos Verdes* (2017) 9 Cal.App.5th 119, 129.)

A. *Whether Section 425.16 Applies to the Claim Against Mahyar*

In his anti-SLAPP motion, Mahyar sought to strike the entire second cause of action for intentional interference with contract. The trial court ruled that Mahyar had failed to make a threshold showing that the second cause of action arose from protected activity, as the court found the gravamen of the cause of action to be unprotected activity, viz., Mahyar’s pattern of conduct constituting undue influence. On appeal, the parties dispute whether the trial court properly assessed the claim against Mahyar in light of *Baral*, decided by our Supreme Court after the trial court issued its ruling.

In *Baral*, the court addressed the application of section 425.16 to “mixed causes of action,” i.e., claims for relief based on allegations of protected and unprotected activity. The court explained: “At the first step [of the anti-SLAPP analysis], the moving defendant bears the burden of identifying all allegations of protected activity, and the claims for relief supported by them. When relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at this stage. If the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached.” (*Baral, supra*, 1 Cal.5th at p. 396.) It further stated that allegations of protected activity that are “merely incidental” or “collateral,” i.e., that “merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute.” (*Id.* at p. 394.)

Here, in his anti-SLAPP motion, Mahyar asserted that the second cause of action for intentional interference with contract is based on allegations that he encouraged Feridoun to file a quiet title action challenging the transfer of the Hillcrest property pursuant to the 2012 agreement. Mahyar's acts are protected under the anti-SLAPP statute. (See *Ludwig v. Superior Court* (1995) 37 Cal.App.4th 8, 18 (*Ludwig*) [instigating a third party to file a lawsuit and encouraging a third party to petition the government are protected activities under section 425.16].) Additionally, Mahyar's protected acts are not merely incidental or collateral to the second cause of action. Rather, they form the basis for the claim for relief based on intentional interference with contract. (See *Navellier, supra*, 29 Cal.4th at p. 92, italics omitted ["anti-SLAPP statute's definitional focus is not the form of the plaintiff's cause of action but, rather, the defendant's activity that gives rise to his or her asserted liability -- and whether that activity constitutes protected speech or petitioning"].) Thus, Mahyar has made his threshold showing that the "challenged claim arises from activity protected by section 425.16. [Citation.]" (*Baral, supra*, 1 Cal.5th at p. 384.) Accordingly, that claim is vulnerable to an anti-SLAPP motion.

"While an anti-SLAPP motion may challenge any claim for relief founded on allegations of protected activity, it does not reach claims based on unprotected activity." (*Baral, supra*, 1 Cal.5th at p. 382.) Mehrdad argues that the allegations of unprotected activity in the cross-complaint support his claim for intentional interference with contract. Specifically, the cross-complaint alleged (1) that Mahyar unduly influenced Feridoun to repudiate and disavow the 2012 agreement, and (2) that Mahyar repeatedly prevented Feridoun from receiving medical care.

However these allegations are insufficient to support a claim for intentional interference with contract. The allegation that Mahyar persuaded Feridoun to repudiate and disavow the 2012 agreement does not support a claim for relief. After the Hillcrest property was transferred in 2015, whether Feridoun repudiated and disavowed the 2012 agreement was immaterial, as the 2012 agreement had been fully performed. Only when the transfer was challenged by the quiet title action did Mehrdad suffer any appreciable harm. Stated differently, Feridoun's repudiation and disavowal would give rise to no cognizable injury, absent the filing of the quiet title action. Mehrdad's reliance on *Mission Beverage Co. v. Pabst Brewing Co.* (2017) 15 Cal.App.5th 686, is misplaced. There, the appellate court held that the defendant's repudiation of an ongoing agreement could support a claim for relief because a party may treat repudiation as an anticipatory breach and immediately seek damages for breach of contract. (*Id.* at p. 702.) No similar circumstance is present here, as the 2012 agreement had been fully performed. In sum, the allegation relating to Feridoun's repudiation and disavowal is incidental or collateral to the interference with contract claim, as the allegation "merely provide[d] context, without supporting a claim for recovery." (*Baral, supra*, 1 Cal.5th at p. 394.)

Likewise, the allegation that Mahyar denied Feridoun medical care cannot support Mehrdad's claim that Mahyar tortiously interfered with the 2012 agreement. The second cause of action was for intentional interference with contract, not elder abuse. As explained above, Mehrdad had no claim for relief on that cause of action until the transfer of the Hillcrest property was challenged in court. Moreover, the cross-complaint alleged that denial of medical care was based on Mahyar's fear that "a

qualified physician would find that Feridoun lacked capacity to maintain his [quiet title] action.” Thus, the allegation that Mahyar prevented Feridoun from receiving medical care merely provided context for Mahyar’s encouragement of Feridoun’s protected activity of maintaining an existing lawsuit. In sum, the allegations of unprotected activity do not support a claim for intentional interference with contract. Absent the allegations of protected activity, Mehrdad has no claim for relief.

B. *Whether the Claim Against Mahyar has Minimal Merit*

Because Mahyar met his burden of demonstrating that the claim against him arose from protected activity, the burden shifts to Mehrdad to show that the claim had minimal merit. Mehrdad cannot do so, as (1) Mahyar’s acts are absolutely privileged under the litigation privilege, Civil Code section 47; and (2) no cause of action for intentional interference with contract can be brought when the only interference alleged is that the defendant induced a third party to bring potentially meritorious litigation.

The litigation 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. [Citations.]” (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212.) “It is not limited to statements made during a trial or other proceedings, but may extend to steps taken prior thereto, or afterwards.” (*Rusheen, supra*, 37 Cal.4th at p. 1057.) In *Ludwig*, the appellate court held that the litigation privilege applies to the “communicative conduct” of recruiting and encouraging third parties to file litigation. (*Ludwig, supra*, 37

Cal.App.4th at p. 20.) Thus, Mahyar’s conduct of encouraging Feridoun to file a quiet title action is absolutely privileged.

Moreover, Mahyar’s acts cannot form the basis for an intentional interference with contract claim. Persuading a third party to bring litigation on a potentially meritorious claim is not tortious. (See *Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1137 [“To permit a cause of action for interference with contract or prospective economic advantage to be based on inducing potentially meritorious litigation on the contract would threaten free access to the courts”]; accord, *Westinghouse Electric Corp. v. Newman & Holtzinger* (1995) 39 Cal.App.4th 1194, 1202 [“Inducing a third party to bring litigation on a meritorious claim cannot be the basis for tort liability.”].) Here, Feridoun’s quiet title action was a potentially meritorious claim. Accordingly, inducing Feridoun to file the action cannot be the basis for tort liability. In sum, Mehrdad cannot demonstrate that his claim against Mahyar has minimal merit.

DISPOSITION

The order denying the anti-SLAPP motion is reversed.
Appellant is awarded his costs on appeal.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.