Filed 7/24/17 McMullen v. Carlson Law Group CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

WILLIE MCMULLEN, Plaintiff and Appellant, v. CARLSON LAW GROUP, Defendant and Respondent.	B270927 (Los Angeles County Super. Ct. No. BC595754)

APPEAL from orders of the Superior Court of Los Angeles County, Ruth Ann Kwan, Judge. Affirmed.

Willie McMullen, in pro. per., for Plaintiff and Appellant.

The Ring Law Firm, Bart I. Ring for Defendant and Respondent.

INTRODUCTION

Plaintiff and appellant Willie McMullen, in propria persona, appeals from the trial court's order granting respondents' special motion to strike the complaint under Code of Civil Procedure section 425.16, the anti-SLAPP statute.[1] He also contends the trial court erred in denying his motion for reconsideration. McMullen sued the law firm and attorney representing opposing parties in a prior litigation, claiming that they improperly sought to force him to pay sanctions and/or settle the first lawsuit based on an invalid court order. We conclude that because McMullen's claims were based on written communications to McMullen from opposing counsel in connection with issues under consideration in the prior lawsuit, they were properly stricken under section 425.16, subdivision (e)(2) (section 425.16(e)(2)). We further find McMullen failed to demonstrate a probability of prevailing on his causes of action. We therefore affirm.

FACTUAL AND PROCEDURAL HISTORY

A. *The Mega Litigation*

The instant case stems from a discovery dispute in a prior lawsuit, in which McMullen represented himself. Respondents, Carlson Law Group Inc. (CLG) and attorney Anne Watson, represented opposing parties. McMullen filed that lawsuit against Mega Real Estate Consultants Inc. (Mega), among others, in Los Angeles Superior Court on November 6, 2013 (the Mega litigation), alleging fraud and related claims arising from the sale of property occupied by McMullen. Respondents represented

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[1] SLAPP is an acronym for Strategic Lawsuit Against Public Participation. All further statutory references are to the Code of Civil Procedure unless stated otherwise.

Mega and several individual defendants (collectively, the Mega defendants) in the Mega litigation.

On March 18, 2015, the trial court held a hearing on motions to compel discovery and a companion request for sanctions filed by the Mega defendants. Respondents appeared at the hearing on behalf of the Mega defendants; McMullen also appeared. The court took the matter under submission at the conclusion of that hearing. Subsequently, none of the parties received notice of a ruling on these motions directly from the court. However, on May 27, 2015, respondents, as counsel for the Mega defendants, served a notice of ruling by mail on all other parties in the Mega litigation, including McMullen. According to the notice, after the trial court heard argument on the discovery motions and took the matter under submission on March 18, 2015, the court "subsequently issued the Minute Order with the Court's final ruling, a true and correct copy of which is attached hereto as Exhibit 'A,' which Moving Party's counsel only recently received."

Attached to the notice as exhibit A is a seven-page minute order purportedly from the court dated March 18, 2015 (March 18 minute order), stating that the court held a hearing on three discovery motions and a sanctions request, issued a tentative ruling, which "[c]ounsel are to review . . . in open court," and took the matter under submission following the hearing.[2] The minute order then stated, "LATER THIS DATE: After further review of all documents submitted in connection with the motions and consideration of oral argument, the Court rules on the Motions

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[2] This tentative ruling is not included in the record before us.

taken under submission as follows:" Following some discussion of each set of discovery, the minute order granted the motions to compel entirely, overruling numerous objections by McMullen and finding his prior discovery responses were "incomplete and/or non-responsive." The minute order compelled McMullen to serve further discovery responses within "10 days of receipt of the notice of ruling," and also granted sanctions against McMullen in the amount of $2,922.50.[3] The minute order then directed defendant's counsel "to give notice of this ruling within 5 days." Following these rulings, the minute order contained a clerk's certificate of mailing for service of the minute order on CLG. This certificate contained a typed date of March 18, 2015 and a blank signature line for the clerk. There is no entry in the docket for the Mega litigation showing the entry of the March 18 minute order. The docket does reflect filing of a notice of ruling on May 28, 2015 by "attorney for defendant."

McMullen received the notice of ruling mailed to him by respondents. However, he did not serve any supplemental discovery responses or pay any sanctions pursuant to the March 18 minute order. On July 6, 2015, respondents sent a letter to McMullen as an "attempt" by the Mega defendants "to meet and confer with you concerning the outstanding supplemental responses the Court ordered you to provide." Referencing the directive in the March 18 minute order to provide supplemental responses and payment of sanctions within 10 days of service of the notice of ruling, respondents demanded compliance by July

[3] According to the minute order, the Mega defendants requested a total of $5,915 in sanctions for the three motions to compel.

16, 2015 to avoid further "motions to compel and/or terminating sanctions."

Respondents sent McMullen a second letter on July 15, 2015, again referencing the Mega litigation and the March 18 minute order. The letter stated that the insurance adjuster for the Mega defendants "has agreed to extend the following offer of settlement to you. My clients will agree to waive the payment of the $2,922.50," and any other litigation costs in exchange for McMullen's agreement to dismiss the Mega defendants with prejudice from the Mega litigation. The letter also noted that the offer was contingent on receipt by the Mega defendants of "a Good Faith Determination from the Court vis-à-vis the other parties." It does not appear that McMullen responded to either letter. The Mega defendants filed a motion for terminating sanctions on September 10, 2015, which was fully briefed by the parties, heard by the court on January 6, 2016, and taken under submission. It is unclear from the record before us how the court ruled on the motion.

B. *Instant Litigation*

1. *Complaint*

McMullen then sued respondents in this action, asserting that respondents used an invalid court order in the Mega litigation to attempt to extort money from him and force him into a settlement. McMullen's verified complaint, filed on September 25, 2015, alleged claims against respondents for "(1) Declaratory Relief"; "(2) Constructive Invasion of Privacy (Civil Code 1708.8(b))"; and "(3) Unlawful Solicitation for Payment of Money (Civil Code 1716)." The complaint cited to and attached copies of the notice of ruling served by respondents in the Mega litigation, as well as the two letters. The complaint asserted that the March

18 minute order was not signed by the court or reflected anywhere in the court record as filed or served by the clerk of the court. As such, McMullen alleged that respondents were "intentional[ly] trying to pass [off]" the March 18 minute order "as an official Court order." Further, McMullen alleged that the letters sent by respondents were "attempted extortion." The complaint requested that the Court "issue a declaration of the rights and duties of the Plaintiff under the 'alleged' written instruments," and a further declaration that the March 18 minute order "is NOT a Court order." McMullen also sought monetary damages totaling $128,866.50.

2. *Respondents' anti-SLAPP motion*

On October 28, 2015, respondents filed a special motion to strike McMullen's complaint pursuant to section 425.16. They argued that the complaint arose out of statements protected under section 425.16, subdivision (e)(2) because they were made in connection with issues under consideration in the Mega litigation. Further, respondents asserted that McMullen could not establish a probability of success on his claims because their statements were protected by the litigation privilege (Civ. Code, § 47, subd. (b)) and McMullen had no evidence to show the March 18 minute order was not authentic.

In her accompanying declaration, Watson provided additional detail regarding the hearing on the motions to compel and the subsequent notice of ruling. She stated that the trial court issued a written tentative ruling on March 18, 2015 "in advance of the hearing," and that the March 18 minute order "essentially adopt[ed] its Tentative Ruling." She further explained that when a final ruling "was not forthcoming in the mail, I asked the law firm's attorney service to go to the Court

and obtain a copy of the Final Minute Order from the Court file, which they did." She then "prepared, filed and served" the notice of ruling, as directed in the March 18 minute order. Watson further declared that she sent the second letter to McMullen on July 15, 2015 in an attempt to resolve the Mega litigation on behalf of her clients. Watson attached copies of the March 18 minute order and the notice of ruling to her declaration.

Respondents also filed a request for judicial notice in support of their motion to strike. Therein, they requested that the court take judicial notice of three documents: (1) the "Operative Second Amended Complaint" in the Mega litigation, the attached copy of which contained neither a signature by McMullen nor a file stamp; (2) the March 18 minute order, described as the "Court's Minute Order issued following oral argument"; and (3) the notice of ruling.

McMullen opposed the motion to strike, arguing that respondents could not meet their burden because there was no evidence the March 18 minute order was actually issued by the court and all of the evidence presented by respondents was inadmissible.[4] In his accompanying affidavit, McMullen objected to numerous portions of respondents' motion to strike, including the entire fact section and "every time" respondents "used the words or phrase(s) Minute Order," as well as portions of Watson's declaration. McMullen also opposed the request for judicial notice.

At the conclusion of the December 10, 2015 hearing on respondents' motion to strike, the court adopted its tentative

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[4] McMullen also argued that respondents were acting illegally by representing Mega while its corporate status was suspended, an argument he does not renew on appeal.

ruling and granted the motion. It found that "the gravamen of Plaintiff's causes of action is that Defendants improperly and/or unlawfully sent Plaintiff the Notice of Ruling, Demand Letter, and Offer Letter." Because these writings "clearly relate to the substantive issues in the underlying litigation (i.e. the Court's Order and the offer of settlement regarding a pending litigation) and are directed to a person having some interest in the litigation (i.e. Plaintiff)," McMullen's claims fell within section 425.16, subdivision (e)(2). The court rejected McMullen's argument that he had a probability of prevailing on his claims, finding he had not submitted "admissible evidence and/or on-point case law or authority to show the Order in the [Mega litigation] is invalid." The court also found that the litigation privilege applied. The court granted respondents' request for judicial notice and their request for attorneys' fees and costs.

McMullen filed a motion for reconsideration of the motion to strike on February 1, 2016. He argued that respondents "misled the trial judge with false testimony and false facts" by suggesting that the March 18 minute order was a valid court order, causing the court to grant respondents' request for judicial notice and, consequently, their motion to strike. McMullen also filed a request for judicial notice, attaching, among other things, the docket from the Mega litigation. The court denied McMullen's motion for reconsideration.[5]

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[5] The court's minute order, dated February 25, 2016, notes the parties were provided a copy of the court's tentative ruling, and then adopts the tentative ruling "as the final ruling of the court and incorporated herein by reference to the case file." The record on appeal does not contain a copy of this tentative ruling.

McMullen timely appealed the order granting the motion to strike and the order denying his motion for reconsideration.[6] He also filed a request for judicial notice, which we granted.

DISCUSSION

I. *Section 425.16 and Standard of Review*

"A SLAPP is a civil lawsuit that is aimed at preventing citizens from exercising their political rights or punishing those who have done so. "'While SLAPP suits masquerade as ordinary lawsuits such as defamation and interference with prospective economic advantage, they are generally meritless suits brought primarily to chill the exercise of free speech or petition rights by the threat of severe economic sanctions against the defendant, and not to vindicate a legally cognizable right.'" [Citations.]" (*Simpson Strong–Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 21 (*Simpson*).)

The Legislature has declared that "it is in the public interest to encourage continued participation in matters of public significance, and . . . this participation should not be chilled through abuse of the judicial process." (§ 425.16, subd. (a).) To this end, the Legislature enacted section 425.16, subdivision (b)(1), which authorizes the filing of a special motion to strike for "[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." [T]he Legislature expressly provided that the anti-SLAPP statute 'shall be

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[6]An order granting a section 425.16 motion is immediately appealable. (§ 425.16, subd. (i);§ 904.1, subd. (a)(13).) An order denying a motion for reconsideration is reviewable as part of an appeal from an underlying appealable order. (§ 1008, subd. (g).)

construed broadly.' (§ 425.16, subd. (a).)" (*Simpson, supra*, 49 Cal.4th at p. 21; see also *Healy v. Tuscany Hills Landscape & Recreation Corp.* (2006) 137 Cal.App.4th 1, 5 (*Healy*) ["Both section 425.16 and Civil Code section 47 are construed broadly, to protect the right of litigants to "'the utmost freedom of access to the courts without [the] fear of being harassed subsequently by derivative tort actions.'" [Citations.]"].)

Analysis of a motion to strike pursuant to section 425.16 involves a two-step process. (*Simpson, supra*, 49 Cal.4th at p. 21.) "First, the defendant must make a prima facie showing that the plaintiff's 'cause of action . . . aris[es] from' an act by the defendant 'in furtherance of the [defendant's] right of petition or free speech . . . in connection with a public issue.' (§ 425.16, subd. (b)(1).) If a defendant meets this threshold showing, the cause of action shall be stricken unless the plaintiff can establish 'a probability that the plaintiff will prevail on the claim.' (*Ibid.*)" (*Simpson, supra*, 49 Cal.4th at p. 21, fn. omitted.) "Only a cause of action 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 be stricken under the statute." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.)

We review the ruling on a special motion to strike de novo. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325 (*Flatley*).) In engaging in the two-step process, we consider "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (§ 425.16, subd. (b)(2).) "However, we neither 'weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and evaluate the defendant's evidence only to determine if it has defeated that submitted by

the plaintiff as a matter of law.' [Citation.]" (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.)

II. *McMullen's Claims Arise From Protected Activity*

Under the first prong of a motion to strike under section 425.16, the moving party has the burden of showing that the cause of action arises from an act in furtherance of the right of free speech or petition—i.e., that it arises from a protected activity. (*Zamos v. Stroud* (2004) 32 Cal.4th 958, 965.) Thus, the moving party must establish both (1) that its act constituted protected activity; and (2) the opposing party's cause of action arose from that protected activity.

First, we determine whether respondents' statements were in fact protected conduct. To meet this burden, respondents must demonstrate that their statements "'fit[] one of the categories spelled out in section 425.16, subdivision (e) . . . .' [Citations.]" (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.) As pertinent here, section 425.16(e)(2) protects "any written or oral statement or writing made in connection with an issue under consideration or review by a . . . judicial body, or any other official proceeding authorized by law."

Because "[t]he filing of lawsuits is an aspect of the First Amendment right of petition" (*Soukup*, *supra*, 39 Cal.4th at p. 291), claims based on actions taken in connection with litigation fall "squarely within the ambit of the anti-SLAPP statute's 'arising from' prong. (§ 425.16, subd. (b)(1))." (*Navellier, supra*, 29 Cal.4th at p. 90, fn. omitted.) "'Thus, statements, writings and pleadings in connection with civil litigation are covered by the anti-SLAPP statute [citation]'" (*Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255, 1261 (*Neville*)), including any written statements made "in connection with an issue under

consideration" in the Mega litigation. Courts have interpreted this statutory language to conclude "that a statement is 'in connection with' litigation under section 425.16, subdivision (e)(2) if it relates to the substantive issues in the litigation and is directed to persons having some interest in the litigation." (*Neville, supra*, 160 Cal.App.4th at p. 1266; see also, e.g., *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 908 [courts have adopted "a fairly expansive view of what constitutes litigation-related activities within the scope of section 425.16"]; *Healy, supra,*137 Cal.App.4th at p. 5 ["[I]t has been established for well over a century that a communication is absolutely immune from any tort liability if it has "'some relation"' to judicial proceedings. [Citation.]"])

Here, McMullen's central argument on appeal is that the trial court improperly granted the motion to strike based on the assumption that the March 18 minute order was a valid order issued by the court in the Mega litigation. However, for the purposes of the first prong of the anti-SLAPP analysis, whether the March 18 order was "valid" is irrelevant. Regardless of the validity or authenticity of the underlying order, the writings made by respondents that McMullen claims were improper—the notice of ruling and the two letters—were all made by respondents in their capacity as counsel for the Mega defendants, were related to substantive issues in the Mega litigation (discussions of discovery responses and sanctions and offers to settle the case), and were directed at McMullen, a party in that litigation. As such, these statements qualify for protection under section 425.16(e)(2). McMullen provides no legal authority or argument to suggest otherwise. The connection between the statements made by respondents and the Mega litigation remains

the same regardless of whether the March 18 minute order upon which they were premised is valid. (See *Flatley, supra*, 39 Cal.4th at p. 319 [To prevail on [the first] prong, the defendant does not have to prove the validity of his or her petitioning or speech activity.]; *Haight Ashbury Free Clinics, Inc. v. Happening House Ventures* (2010) 184 Cal.App.4th 1539, 1549 ["whether or not his statements were false does not determine whether they constitute protected activity for purposes of the SLAPP statute"].)

We also find respondents established that McMullen's claims arose out of the protected activity, a conclusion McMullen does not appear to challenge. The gravamen of each of his claims is that he was injured as a result of the notice of ruling and the letters sent by respondents, because those statements made demands based on an invalid court order. In considering whether a complaint arises from protected activity, we disregard the labeling of the claim and instead "examine the principal thrust or gravamen of a plaintiff's cause of action to determine whether the anti-SLAPP statute applies." (*Ramona Unified School Dist. v. Tsiknas* (2005) 135 Cal.App.4th 510, 522.) We assess the principal thrust by identifying "[t]he allegedly wrongful and injury-producing conduct . . . that provides the foundation for the claim." (*Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 189.) McMullen claims his injuries were caused by respondents' litigation-related statements; thus, his lawsuit arises out of protected activity.

As such, we agree with the trial court's conclusion that respondents met their burden on the first prong of the anti-SLAPP motion to strike. We next examine the second prong, i.e., whether McMullen met his burden to demonstrate a probability of prevailing on his claims.

III. *McMullen Did Not Demonstrate a Probability of Prevailing*

Once defendant satisfies the first prong of the anti-SLAPP analysis, "the burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated. The court, without resolving evidentiary conflicts, must determine whether the plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment. If not, the claim is stricken." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396.) "The showing must be made through 'competent and admissible evidence' [citations]." (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 26.) A plaintiff ""cannot simply rely on the allegations in the complaint" [citation]' [citation]." (*Alpha & Omega Development, LP v. Whillock Contracting, Inc.* (2011) 200 Cal.App.4th 656, 664.)

Respondents contend, and the trial court found, that McMullen could not meet his burden on this prong because the statements at issue were protected by the litigation privilege. We agree.

The litigation privilege is codified in Civil Code section 47, subdivision (b). As relevant here, Civil Code section 47, subdivision (b)(2) defines a "privileged publication or broadcast" as one made in "any judicial proceeding." "[T]he 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.) "'The principal purpose of [Civil Code] section [47, subdivision (b)] is to afford

litigants and witnesses [citation] the utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort actions.' (*Silberg,*[*supra,*] 50 Cal.3d [at p.] 213.) Additionally, the privilege promotes effective judicial proceedings by encouraging "'open channels of communication and the presentation of evidence'" without the external threat of liability (*ibid.*), and "by encouraging attorneys to zealously protect their clients' interests." (*Id.* at p. 214.) "'Finally, in immunizing participants from liability for torts arising from communications made during judicial proceedings, the law places upon litigants the burden of exposing during trial the bias of witnesses and the falsity of evidence, thereby enhancing the finality of judgments and avoiding an unending roundelay of litigation, an evil far worse than an occasional unfair result.' (*Ibid.*)" (*Flatley, supra,* 39 Cal.4th at p. 322.)

"To accomplish these objectives, the privilege is 'an "absolute" privilege, and it bars all tort causes of action except a claim of malicious prosecution.' [Citation.]" (*Flatley, supra*, 39 Cal.4th at p. 322.) "Any doubt as to whether the privilege applies is resolved in favor of applying it. [Citations.]" (*Adams v. Superior Court* (1992) 2 Cal.App.4th 521, 529.) To be privileged under section 47, a statement must be "reasonably relevant" to pending or contemplated litigation. (See *Silberg, supra,* 50 Cal.3d at p. 220 [communication must have some "reasonable relevancy to the subject matter of the action"].) While the protections under the litigation privilege and the anti-SLAPP statute are not identical (see *Flatley, supra,* 39 Cal.4th at pp. 324-325), cases construing the scope of the litigation privilege have read the reasonable relevancy requirement of section 47 as analogous to the "in connection with" standard of section 425.16,

subdivision (e)(2) (*Neville, supra*, at p. 1266). "The litigation 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. [Citations.]" (*Flatley, supra,* 39 Cal.4th at p. 323.)

Here, McMullen does not challenge the application of the litigation privilege to his second and third causes of action. We agree that the privilege applies, as the communications at issue were clearly relevant to the pending Mega litigation. We also conclude that the privilege bars McMullen's first cause of action for declaratory relief, and disagree with his argument that *Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 479 (*Lunada*) compels otherwise.

In *Lunada, supra*, 230 Cal.App.4th at p. 467, a company filed a single cause of action seeking declaratory relief that it had not violated the Consumers Legal Remedies Act (CLRA) in advertising its product, based on a notice served by attorneys for a consumer alleging such violations. In evaluating the second prong of the defendants' anti-SLAPP motions, the court found that the litigation privilege did not apply. Noting that the "'litigation privilege shields a [person] from liability *based on*' the communication [citation]," the court distinguished the company's case, because the complaint sought only declaratory relief "regarding 'the accuracy and legality' of plaintiff's advertising," rather than alleging that defendants were liable for a tort based on the CLRA notice or any other communication.[7] (*Id.* at p. 479, italics in original.)

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[7] Ultimately, the court affirmed the granting of the anti-SLAPP motions on an alternate ground, holding that a recipient of a CLRA notice may not bring a declaratory relief action, as it

Here, by contrast, McMullen's claim for declaratory relief is based on the same allegations as his other two claims, namely, that respondents knew the March 18 minute order was invalid and then intentionally used it "under fraudulent and false pretense" to "try to defraud Plaintiff out of money" and "to swindle Plaintiff into dismissing his claims against their clients." As such, the complaint seeks a declaration from the court that, among other things, the March 18 minute order is invalid and respondents committed various torts and criminal acts, including "fraud, mail fraud and attempted extortion." Thus, despite labeling this claim as one for declaratory relief, McMullen is seeking—as with his other two causes of action—to hold respondents liable for their privileged communications. This claim is thus barred by the litigation privilege as well. (See *Cel–Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 182 ["'If the policies underlying section 47(b) are sufficiently strong to support an absolute privilege, the resulting immunity should not evaporate merely because the plaintiff discovers a conveniently different label for pleading what is in substance an identical grievance arising from identical conduct as that protected by section 47(b).' [Citation.]"].)

Moreover, even without the protections of the litigation privilege, McMullen failed to make even a minimal showing of evidentiary merit necessary to demonstrate a probability of success on his claims. The ""mere existence of a controversy is insufficient to overcome an anti-SLAPP motion against a claim for declaratory relief. [¶] To defeat an anti-SLAPP motion, the plaintiff must also make a prima facie evidentiary showing to

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would undermine the purpose behind the CLRA. (*Id*. at pp. 484-485.)

sustain a judgment in the plaintiff's favor. [Citation.] In other words, for a declaratory relief action to survive an anti-SLAPP motion, the plaintiff must introduce substantial evidence that would support a judgment of relief made in the plaintiff's favor." [Citations.]'" (*Lunada, supra*, 230 Cal.App.4th at pp. 478-479.)

Here, McMullen presented no evidence establishing that the March 18 minute order reflected anything other than the actual rulings made by the trial court on the motions to compel in the Mega litigation. Moreover, McMullen did not demonstrate that respondents knowingly used a falsified order of the court to attempt to extract money or a settlement from him. For example, he cites no authority requiring a minute order disposing of discovery motions to be signed by the court or served on all parties by the clerk. Notably, the other minute order in the record—the order denying McMullen's motion for reconsideration—also does not include a signature or proof of service by the clerk. There were some irregularities in the issuance and service of the March 18 minute order. For example, there is no indication that the court clerk served *any* party. However, McMullen has not established that these issues invalidate the order itself or can be tied to any misconduct by respondents.

Further, there is no indication in the record that McMullen raised any objection or challenge in the Mega litigation to respondents' notice of ruling or the rulings he now resists. He also does not offer any evidence rebutting defendants' account of the court's tentative ruling on the motions to compel and sanctions, which was purportedly issued at the hearing he attended and then incorporated into the ultimate order. Given that the case continued to be litigated before the trial court,

including a January 2016 hearing on a motion for terminating sanctions by respondents related to the same issue, it is unlikely that the Mega court would remain silent if informed of circulation of a fraudulent order in its name. Accordingly, McMullen has not demonstrated he would be likely to succeed on any of his claims.

Finally, we briefly consider McMullen's claims of error regarding his evidentiary objections or the trial court's granting of respondents' request for judicial notice. McMullen alleges, for example, that Watson's statements in her declaration regarding the trial court's tentative ruling, which she did not attach, were inadmissible. Similarly, although it appears McMullen filed a second amended complaint in the Mega litigation, he objected that the copy attached to respondents' request for judicial notice was unsigned and bore no indicia of filing. But any such error would be harmless for the purposes of our anti-SLAPP analysis. McMullen's complaint against respondents alleges the substance of the notice of ruling and the two letters, and McMullen's own filings have attached those documents. As such, there was no need to rely on any of the challenged evidence in order to grant the motion to strike.

IV. *No Basis for Reconsideration*

McMullen also argues that the trial court failed to rule on his request for judicial notice in support of his motion to reconsider. We review an order denying a motion for reconsideration under the abuse of discretion standard. (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212.) Here, we cannot effectively review the trial court's ruling. The trial court's final order incorporates its tentative ruling and provides no other details regarding the court's conclusions, including any rulings on McMullen's evidentiary submissions.

Appealed judgments and orders are presumed correct, and error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Consequently, as the appellant, McMullen has the burden of providing an adequate record and failure to do so requires that the issue be resolved against him. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296.) Without an adequate record, a reviewing court must make all presumptions in favor of the validity of the judgment. (*Elena S. v. Kroutik* (2016) 247 Cal.App.4th 570.) Because McMullen has not included the tentative ruling in the record, we must presume the trial court's rulings were correct. In any event, McMullen's motion presents no valid basis for reconsideration, a conclusion McMullen does not substantively challenge apart from his claim the court erred in failing to rule on his request for judicial notice. We therefore conclude the trial court did not err in denying his motion for reconsideration of the anti-SLAPP motion.

DISPOSITION

The orders granting respondents' motion to strike pursuant to section 425.16 and denying McMullen's motion for reconsideration are affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

EPSTEIN, P. J. MANELLA, J.