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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

BADRIA ELNAGGAR, et al., Plaintiffs and Appellants, v. SUHAILA SHUBASSI ELMOHTASEB, et al., Defendants and Respondents.	B263477 (Los Angeles County Super. Ct. No. SC122023)

APPEAL from a judgment of the Superior Court of Los Angeles County, H. Chester Horn, Judge. Affirmed.

Badria Elnaggar and Eman Elamin, in pro. per., for Plaintiffs and Appellants.

Shaver, Korff & Castronovo, Tod M. Castronovo, for Defendants and Respondents Suhaila Shubassi Elmohtaseb, Ghormley & Associates, Douglas P. Luna Vining, Mercury Casualty Company, and Gabriel Tirador.

Steven J. Horn for Defendants and Respondents Toni V. Ramos and Steven J. Horn.

Plaintiffs and appellants Badria Elnaggar and Eman Elamin appeal from a judgment following an order granting special motions to strike under Code of Civil Procedure section 425.16 (the anti-SLAPP statute)[1] in favor of defendants and respondents Suhaila Shubassi Elmohtaseb, her attorney Douglas P. Luna Vining and his law firm Ghormley & Associates APC, her insurer Mercury Insurance Group, Mercury's president Gabriel Tirador, attorney Steven J. Horn, and process server Toni V. Ramos in this action arising out of collection of a judgment. Plaintiffs contend their causes of action were not based on protected activity, and they demonstrated a probability of prevailing on the merits. We affirm. The trial court properly determined plaintiffs' claims were based on defendants' protected litigation activity and they failed to demonstrate a probability of prevailing on the merits because defendants' conduct is protected by the litigation privilege.

FACTS AND PROCEDURAL BACKGROUND

Allegations of the Complaint

Plaintiffs filed their original complaint in propria persona on February 5, 2014. They filed an amended complaint on March 3, 2014, alleging causes of action for fraud, deceit, forged court documents, fraudulently recorded liens, concealment of known material facts, misuse of power and blackmail, alteration of plaintiffs' status in court documents, violation of section 998, violation of Business and Professions Code section 17200, perjury, intentional infliction of emotional distress, and filing a fraudulent writ, based on the following allegations of fact.

In November 2005, plaintiffs were riding in a car driven by Elmohtaseb when they were injured in a car accident. They filed a negligence action against Elmohtaseb.

[1] SLAPP is an acronym for "Strategic Lawsuits Against Public Participation." (*Equilon Enterprise v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57, fn. 1.) All further statutory references are to the Code of Civil Procedure, unless otherwise stated.

Elmohtaseb's insurer Mercury was not named as a defendant. A year before trial, Mercury made a settlement offer that did not refer to section 998. In March 2009, Mercury made a section 998 offer. The case was reclassified from limited to unlimited civil jurisdiction on May 28, 2009. Mediations were held on December 7 and 11, 2009. Mercury made another settlement offer on January 13, 2010, that did not refer to section 998. A trial was held and the jury returned a verdict in favor of plaintiffs in February 2010. Plaintiffs' attorney disappeared after the trial.

Plaintiffs allege the 998 offer made in March 2009 was invalid because Mercury was not a party to the negligence action, the case was reclassified after the offer was made, and mediations took place after the offer was made. Defendants filed a fraudulent memorandum of costs in the negligence action based on the invalid offer to compromise under section 998. Defendants did not attach a copy of the section 998 offer and failed to support the costs requested for expert witnesses. Experts were included who were never named on the joint witness list and whose services were not submitted in court. Service of process fees were listed for a physician who never treated plaintiffs. Defendants did not state the experts' hourly rates or fees. Defendants fraudulently obtained a judgment relying on the invalid 998 offer dated March 2009.

Defendants recorded a fraudulent abstract of judgment based on the invalid judgment filed with the trial court. The court seal and stamp on the abstract of judgment are forged. The abstract of judgment incorrectly states that a summons or sister-state judgment was personally served or mailed to Elnaggar. Elamin was listed as a judgment debtor, but her name was crossed out and replaced with another name twice. It incorrectly states that a summons was personally served or mailed to Elmohtaseb through her attorneys.

Plaintiffs received two letters from the Orange County Clerk-Recorder's Office dated August 24, 2010. The letter notified them that liens were recorded referencing plaintiffs' real properties.

In January 2011, plaintiffs received two letters from Mercury demanding payment. The letters warned that interest was accruing from the date of entry of judgment and

Mercury would take all necessary action to recover the amount due, including garnishment of wages and attachment of property. Elamin began receiving letters and telephone calls from a debt collection company named Guaranty Collection Company demanding payment of $12,000. Guaranty's agent stated the company's intent to collect on the judgment rendered against Elamin involving Mercury. Elamin filed a lawsuit against Guaranty. The collection company settled the case and defendants reported the invalid amount to the credit bureau.

On March 8, 2012, plaintiffs asked Mercury for more information about the sister state judgment and summons mentioned in the abstract of judgment. On March 8, 2012, Mercury wrote to them that a judgment was served by mail; no sister state judgment was made. Plaintiffs allege they were not served with anything. Mercury directed plaintiffs' inquiries to Guaranty.

Plaintiffs responded to Guaranty's letters by rejecting the legality of the debt. Defendants formed an association with Horn, who is the debt collection attorney for Guaranty. Horn and process server Ramos filed an association of attorneys with the trial court that was different from the document mailed to plaintiffs. In the document filed with the trial court, the address provided for plaintiffs was on Euclid Street, where plaintiffs lived for a few months, but had not lived for more than a year and a half. The association of attorneys sent to plaintiffs had the Euclid Street address crossed out and their current address written in by hand.

Defendants filed a memorandum of costs after judgment, acknowledgement of credit and declaration of accrued interest, dated May 11, 2012. The proof of service filed with the court stated that the documents were mailed to plaintiffs on May 11, 2012. The Euclid Street address was provided for plaintiffs in the document filed with the court.

Defendants also sent plaintiffs a memorandum of costs after judgment, acknowledgement of credit, and declaration of accrued interest dated May 11, 2012. The proof of service sent to plaintiffs stated the documents were mailed on May 21, 2012. The Euclid Street address is crossed out and plaintiffs' current address written in by hand. Defendants "forged the Plaintiff's status in the case." The document incorrectly stated

that Elnaggar and Elamin were defendants in the underlying case and Elmohtaseb was the plaintiff. It stated the amount of accrued interest based on the judgment and was stamped "copy" on the signature line. Defendants used an incorrect address for documents filed with the court in order to deny plaintiffs' their due process right to be heard.

On July 17, 2012, defendants obtained a writ of execution against plaintiffs. Defendants' actions have caused plaintiffs to suffer severe and constant anxiety, emotional distress, fear, and emotional trauma.

Anti-SLAPP Motions and Supporting Evidence

On April 7, 2014, Ramos and Horn each filed an anti-SLAPP motion arguing that the allegations were based on statements and pleadings made during judicial proceedings or in connection with post-judgment collection procedures protected under the anti-SLAPP statute. Plaintiffs could not show a probability of prevailing on their causes of action, because all of the alleged conduct was protected by the litigation privilege set forth in Civil Code section 47. Plaintiffs did not contest the memorandum of costs in the negligence case by filing a motion to tax costs, and the costs became part of the judgment.

Ramos submitted her declaration in support of the motion which stated in pertinent part as follows. Ramos is a longtime employee of Guaranty, which is a collection agency. Mercury assigned the collection of the costs awarded to Elmohtaseb in the negligence action to Guaranty on January 27, 2011. Ramos prepared the memorandum of costs and the association of attorney. After Horn reviewed and signed the originals, Ramos filed the originals and served copies. Ramos prepared the writ of execution, and after Horn reviewed and signed the writ, Ramos had it issued by the court clerk.

Ramos requested that the court take judicial notice of several documents filed in the negligence action. On July 2, 2008, plaintiffs substituted Gregory Stannard as their attorney of record in the negligence action. On May 15, 2009, the negligence case was reclassified to unlimited jurisdiction. A jury trial commenced on February 1, 2010. On

February 8, 2010, the jury returned a verdict finding Elmohatseb's negligence was a substantial factor in causing harm to Elnaggar and Elamin. The jury found the total amount of damages caused by Elmohatseb's negligence was $8,416. Elmohatseb's attorney Vining prepared the judgment signed by the trial court on March 12, 2010, reflecting that the jury rendered judgment in favor of Elnaggar in the amount of $3,700 and in favor of Elamin in the amount of $4,700. The court ordered that Elmohtaseb recover costs taxed in the sum of $19,289 from Elnaggar and Elamin pursuant to Elmohtaseb's section 998 offer to compromise dated March 6, 2009 to Elnaggar in the amount of $9,500, and to Elmain in the amount of $12,500 based on Elmohtaseb's memorandum of costs filed on February 19, 2010.

A memorandum of costs after judgment, acknowledgment of credit, and declaration of accrued interest, which was signed by attorney Horn on May 11, 2012, was filed with the trial court on June 13, 2012, stating the amount of accrued interest was $2,359.78. The proof of service attached, signed by Ramos, stated that a copy of the memorandum of costs was mailed to plaintiffs at the Euclid Street address on May 11, 2012.

Elmohtaseb, Ghormley, Vining, Mercury, and Tirador (the Elmahtaseb defendants) filed an anti-SLAPP motion on April 17, 2014, also arguing that the conduct alleged in the complaint was litigation activity that was protected activity under section 425.16. The litigation privilege applied to all of the alleged conduct related to the underlying negligence action, including the memorandum of costs, the 998 offer, the judgment, the abstract of judgment, Mercury's letters related to the judgment, the association of attorney, the proofs of service, and the writ of execution, which were all made in, or in connection to, a judicial proceeding by litigants, or other participants authorized by law, to achieve the objects of the litigation.

They filed several documents in support of the motion to strike, including the abstract of judgment recorded August 12, 2010.

Opposition to Anti-SLAPP Motions and Supporting Evidence

On February 2, 2015, Elnaggar and Elamin filed a joint declaration that was not signed under penalty of perjury. They declared that they were in the back seat of a car driven by Elmohtaseb, when they were injured in a car accident in November 2005. They filed the action against Elmohtaseb in November 2005. On May 28, 2009, the case was reclassified from limited to unlimited jurisdiction. Mediations took place on December 7 and 11, 2009. The jury found in their favor in February 2010. The minute order directed their attorney Gregory Stannard to prepare the judgment, but Stannard disappeared after trial without returning plaintiffs' file to them.

On February 22, 2010, Vining and his firm filed a memorandum of costs on Elmohtaseb's behalf. On March 12, 2010, Vining and his firm, on Elmohtaseb's behalf, obtained a judgment against plaintiffs. On August 12, 2010, they recorded a lien based on an abstract of judgment which was twice rejected by the court and never issued. A representative of the court told plaintiffs that the court had never certified or issued the abstract of judgment. They received threatening and harassing letters from Mercury in January 2011, although Mercury was not a party to the action and not named in the judgment. Mercury directed inquiries to Guaranty. Elamin began receiving letters and telephone calls from Guaranty seeking payment of approximately $12,000. Plaintiffs sought information about the abstract of judgment, sister state judgment and the summons mentioned in documents they had received. Mercury refused to provide information. Guaranty informed plaintiffs that it had been assigned collection of the judgment in the negligence case. Plaintiffs contested the legality of the debt in writing. Vining and Ghormley entered into an association of attorneys with Horn. Horn and Ramos filed a different association of attorneys document with the court than was sent to plaintiffs. Horn and Ramos sent plaintiffs a memorandum of costs after judgment, acknowledgment of credit and declaration of accrued interest, with proof of service. Defendants obtained a writ against plaintiffs based on the memorandum of costs after judgment.

Plaintiffs attached documents to their declaration, including the memorandum of costs that Vining filed with the court on Elmohtaseb's behalf in the negligence action on February 22, 2010, reflecting total costs of $19,289. They included copies of Elnaggar's correspondence requesting a copy of the abstract of judgment. One letter has a handwritten notation that the abstract of judgment was rejected on May 10, 2012. In a series of e-mail messages, an employee of the Orange County court informed Elnaggar that if the abstract had been accepted, it would not be part of the file, because it would have been issued and not filed. The only way to get a copy of the abstract would be from where the abstract was ultimately filed.

Plaintiffs also attached copies of letters from Mercury seeking to collect the amount of the judgment. Mercury stated that it would take the necessary action to recover the amount due. Mercury stated that to avoid additional interest accruing, possible garnishment of their wages, or attachments to any property owned, they should contact Mercury to arrange payment. Plaintiffs attached demand letters from Guaranty as well.

Plaintiffs wrote a letter to Mercury seeking information about the sister state judgment filed against them. Mercury responded that no sister state judgment was entered, and clarified that the documents referred to the judgment filed in the negligence case. Guaranty provided a copy of the judgment to plaintiffs. Plaintiffs also submitted copies of the memorandum of costs and proofs of service that they received.

Trial Court Ruling

A hearing was held on February 13, 2015. No reporter's transcript or settled statement is part of the record on appeal. The trial court struck plaintiffs' declaration because it was not executed under penalty of perjury. However, the court noted that its ruling would have been the same if the declaration had been admitted in its entirety. The trial court found the gravamen of plaintiffs' claims concerned acts in the course of obtaining and enforcing the judgment in the negligence action, and therefore, fell within

the anti-SLAPP statute. Plaintiffs failed to establish a probability of prevailing at trial on any of their claims. The court concluded that the litigation privilege applied to the litigation activities which formed the basis of the complaint. The court granted all of the motions to strike. The court awarded attorney fees in the amount of $8,500 to Ramos and attorney fees in the amount of $3,465 to the Elmohtaseb defendants. The court awarded all of defendants their appearance and motion fees. The court entered judgment in favor of all defendants on February 27, 2015. Plaintiffs filed a timely notice of appeal.

DISCUSSION

Standard of Review and Statutory Scheme

"Courts construe the anti-SLAPP statute broadly to protect the constitutional rights of petition and free speech. [Citations.] In ruling on an anti-SLAPP motion, the trial court conducts a two-part analysis: The moving party bears the initial burden of establishing a prima facie case that the plaintiff's cause of action arises from the defendant's free speech or petition activity, as defined in the anti-SLAPP statute. (§ 425.16, subds. (b)(1), (e); *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) If the moving party meets its burden, the burden shifts to the plaintiff to establish a probability that he or she will prevail on the merits. (§ 425.16, subd. (b)(1); *Flatley v. Mauro* (2006) 39 Cal.4th 299, 314 (*Flatley*).)" (*Anderson v. Geist* (2015) 236 Cal.App.4th 79, 84.)

A defendant meets its threshold burden of demonstrating that a cause of action arises from protected activity by showing that the act or acts underlying the claim fit one or more of the four categories described in section 426.16, subdivision (e). (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) These categories include "any written or oral statement or writing" that is "made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law" (§ 425.16, subd. (e)(1)), "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" (*id.* at subd. (e)(2)), or "made in a place open to the public or a public forum in connection with an issue of public interest" (*id.* at subd. (e)(3)), as well as "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" (*id.* at subd. (e)(4)).

"An appellate court independently reviews the trial court's order denying an anti-SLAPP motion. [Citation.] In our evaluation of the trial court's order, we consider the pleadings and the supporting and opposing affidavits filed by the parties on the anti-SLAPP motion. In doing so, we do not weigh credibility or determine the weight of the evidence. Rather, we accept as true the evidence favorable to the plaintiff and evaluate the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law. [Citation.]" (*Bailey v. Brewer* (2011) 197 Cal.App.4th 781, 788.)

Protected Activity

Plaintiffs' claims are based on defendants' litigation activity in obtaining and enforcing the underlying judgment: the memorandum of costs and the judgment filed in the negligence action, the abstract of judgment, letters and telephone calls demanding payment of the judgment, the notice of association of attorneys, the memorandum of costs after judgment, proofs of service, and the writ of execution. This litigation activity is protected under the anti-SLAPP statute.

Under section 425.16 "[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 . . . shall be subject to a special motion to strike. . . ." (§ 425.16, subd. (b)(1).) "'A cause of action "arising from" defendant's litigation activity may appropriately be the subject of a section 425.16 motion to strike.' [Citation.] 'Any act' includes communicative conduct such as the filing, funding, and prosecution of a civil action. [Citation.] This includes qualifying acts committed by attorneys in representing clients in litigation. [Citations.]" (*Rusheen*

v. Cohen (2006) 37 Cal.4th 1048, 1056 (*Rusheen*).) Postjudgment enforcement activities that are necessarily related to the defendant's litigation activity are protected under section 425.16 as well. (*Rusheen*, *supra*, at p. 1062-1063.)

The gravamen of plaintiffs' claims in this case concern acts of alleged misconduct in the course of obtaining and enforcing the judgment in the negligence action, which are protected activities under the anti-SLAPP statute. On appeal, plaintiffs have failed to offer any coherent analysis otherwise. The trial court properly found the anti-SLAPP statute applied to plaintiffs' claims.

Probability of Prevailing

Plaintiffs failed to show a probability of prevailing on any of their causes of action, because all of the communications and conduct that form the basis of the complaint fell within the litigation privilege of Civil Code section 47.

Civil Code section 47 provides: "[a] privileged publication or broadcast is one made . . . [i]n any . . . judicial proceeding . . . ." (Civ. Code, § 47, subd. (b).) "'Although originally enacted with reference to defamation [citation], the privilege is now held applicable to any communication, whether or not it amounts to a publication [citations], and all torts except malicious prosecution. [Citations.] Further, it applies to any publication required or permitted by law in the course of a judicial proceeding to achieve the objects of the litigation, even though the publication is made outside the courtroom and no function of the court or its officers is involved. [Citations.]'" (*Rusheen*, *supra*, 37 Cal.4th at p. 1057, citing *Silberg v. Anderson* (1990) 50 Cal.3d 205, 212 (*Silberg*).)

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, supra,* 50 Cal.3d at p. 212.)

"Thus, 'communications with "some relation" to judicial proceedings' are 'absolutely immune from tort liability' by the litigation privilege [citation]. It 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.)

"The '[p]leadings and process in a case are generally viewed as privileged communications.' (*Navellier v. Sletten*[, *supra*,] 106 Cal.App.4th [at p.] 770.) The privilege has been applied specifically in the context of abuse of process claims alleging the filing of false or perjurious testimony or declarations. (*Pollock v. University of Southern California* (2003) 112 Cal.App.4th 1416, 1431 [declaration 'functions as written testimony,' is a 'communication, not conduct,' and 'is exactly the sort of communication the privilege is designed to protect']; *Pettitt v. Levy* (1972) 28 Cal.App.3d 484, 489 ['[p]reparing and presenting false documents is equivalent to the preparation and presentation of false testimony']; *Carden v. Getzoff* (1987) 190 Cal.App.3d 907, 913–915 [claim that expert witness had manufactured false evidence for former wife in dissolution action was privileged].) Thus, . . . the communicative act of filing an allegedly false declaration of service of process fell within the litigation privilege. [Citations.]" (*Rusheen, supra*, 37 Cal.4th at p. 1058.)

"[S]ince a party may not be liable for submitting false testimony or evidence in the course of judicial proceedings which are used to obtain a judgment, the party should likewise be immune from abuse of process claims for subsequent acts necessary to enforce it. Otherwise, application of the litigation privilege would be thwarted. Thus, where the gravamen of the complaint is a privileged communication (i.e., allegedly perjured declarations of service) the privilege extends to necessarily related noncommunicative acts (i.e., act of levying). [¶] Extending the litigation privilege to postjudgment enforcement activities that are necessarily related to the allegedly wrongful communicative act is consistent with public policy considerations." (*Rusheen, supra*, 37 Cal.4th at pp. 1062–63.)

"[I]f the gravamen of the action is communicative, the litigation privilege extends to noncommunicative acts that are necessarily related to the communicative conduct, which in this case included acts necessary to enforce the judgment and carry out the directive of the writ. [Citations.] Stated another way, unless it is demonstrated that an

independent, noncommunicative, wrongful act was the gravamen of the action, the litigation privilege applies." (*Rusheen, supra*, 37 Cal.4th at p. 1065.)

The litigation privilege applies to all of the litigation activities underlying plaintiffs' claims. Plaintiffs have failed to show any of the alleged misconduct was not subject to the litigation privilege. The trial court correctly granted the anti-SLAPP motions.

DISPOSITION

The judgment is affirmed. Respondents Suhaila Shubassi Elmohtaseb, Douglas P. Luna Vining, Ghormley & Associates APC, Mercury Insurance Group, Gabriel Tirador, Steven J. Horn, and Toni V. Ramos are awarded their costs on appeal.

KRIEGLER, J.

We concur:

TURNER, P.J.

BAKER, J.