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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

HARRY LOVELAND et al.,

Plaintiffs, Cross-
defendants, and Appellants,

v.

SOL DEL CIELO, LLC, et al.,

Defendants, Cross-
complainants, and Respondents.

B295222

(Los Angeles County
Super. Ct. No. TC029123)

APPEAL from a judgment of the Superior Court for Los Angeles County, Maurice A. Leiter, Judge. Affirmed.

Cliff Dean Schneider for Plaintiffs, Cross-defendants, and Appellants.

Sandoval Law and Abraham Sandoval for Defendants, Cross-complainants, and Respondents.

Plaintiffs/Cross-defendants Harry Loveland and Charlene Loveland (collectively, the Lovelands¹) appeal from an order denying in part their special motions to strike the cross-complaints of defendants/cross-complainants Sol Del Cielo, LLC (Sol) and Abraham Sandoval. Because we find that all but one of the claims that remain in the cross-complaints fall outside the purview of Code of Civil Procedure² section 425.16, the so-called anti-SLAPP statute, and Sol and Sandoval established a probability of prevailing on the one claim that falls within the statute, we affirm the trial court's order.

BACKGROUND

A. Facts Leading Up to Cross-Complaints

The Lovelands own and reside on a property in Lynwood, California (the Loveland property). Sol owns the property adjacent to the Loveland property (the Sol property); Sandoval is the managing member of Sol. The Sol property is zoned R-3, which allows for the construction of multiple residential units.

In late 2015, Sol submitted plans for the construction of six new residential units on the Sol property.³ The plans were approved, and

¹ When referring to only one of the Lovelands, we will use his or her first name for ease of reference. We mean no disrespect.

² Further undesignated statutory references are to the Code of Civil Procedure.

³ There was an existing single house on the property, which would remain; it was leased to and occupied by Yesenia Flores and her family during the events at issue.

building permits for construction of the units were issued in or around April 2017. Construction began in or around May or June 2017.

According to the Lovelands, construction workers repeatedly entered the Loveland property without permission during the construction, the construction caused significant damage to the Loveland property (including to a turtle habitat on that property), the construction workers destroyed and/or cut down trees bordering the two properties without the Lovelands' permission, and a block wall was constructed on the Loveland property. Charlene called the Los Angeles County Sheriff's Department to report the damage to the Loveland property, and made complaints to the City of Lynwood and its mayor about the trespass and damage to the property. She also created posts on Facebook, to a group page called "Crime Watch of Lynwood." Those posts included photographs of the alleged damage to the Loveland property purportedly caused by the construction; Charlene also posted comments to those posts regarding the construction.

In April 2018, the Lovelands filed a lawsuit against Sol, Sandoval, and M.L. Culkin Construction Company, Inc., the contractor for the construction on the Sol property (that company is not a party in this appeal). The operative first amended complaint alleges causes of action for trespass to land, private nuisance, trespass to timber, and conversion.

B. *Sol's Cross-Complaint*

On September 7, 2018, Sol filed a cross-complaint against the Lovelands and Manuel Santos (who is not a party in this appeal)

alleging causes of action for real property trespass, intentional interference with contractual relations, intentional interference with prospective economic advantage, negligent interference with prospective economic advantage, contribution under section 841 for maintenance of boundaries, abatement and enjoinder of nuisance, defamation-slander, defamation-libel, and trade libel. The cross-complaint alleged, in relevant part,⁴ that the Lovelands “initiated a campaign of terror” against Sol by harassing Sol’s tenants and workers, filing false statements with City of Lynwood code enforcement officials and the Los Angeles County Sheriff’s Department, invading the privacy of Sol’s tenants and construction workers by flying aerial drones over the Sol property and taking pictures to post online, and screaming at or verbally threatening Sol’s tenants and construction workers.

The interference causes of action (i.e., the second, third, and fourth causes of action) are based upon Sol’s contract or economic relationship with its tenants, the Flores family. The specific conduct Sol’s cross-complaint alleges, upon which all of the interference causes of action are based, is found in paragraph 31, which is repeated in each of those claims. That paragraph lists the following conduct: “a. Continually advising [Sol’s] TENANTS that the rental value pursuant to the rental contract with [Sol] was too exorbitant and must be renegotiated because TENANTS were getting ‘ripped off’; [¶] b.

⁴ Because the Lovelands’ special motion to strike addressed only the interference, defamation, and trade libel causes of action, our discussion is limited to the allegations relevant to those claims.

Continually advising [Sol's] TENANTS that TENANTS should be receiving a 'discount' on the rent because the home was in 'deficient' condition when in fact it has never been; [¶] c. Purposefully and maliciously filing false and frivolous complaints with the CITY with respect to false code enforcement violations for the purposes of disturbing or causing interference with [Sol's] contractual relations with its TENANTS; [¶] d. Intentionally harassing TENANTS and admonishing TENANTS to move from the [Sol] PROPERTY through a series of text messages, Facebook messages, verbal comments, and other communications; [¶] e. Posting a series of false assertions of fact on postings, blogs, and other communications online intended to disturb [Sol's] relations with its TENANTS and future prospective tenants; [¶] f. And . . . other intentional actions or omissions as may be revealed through discovery, intended to disrupt, prevent, or create performance of [Sol's] obligations and benefits under said contract more difficult or expensive."

Sol's defamation-slander cause of action (the seventh cause of action) alleges that the Lovelands orally uttered and/or orally publicized a series of false statements that Sol was conducting its business activities in an unlawful or otherwise improper manner. The defamation-libel cause of action (the eighth cause of action) alleges that the Lovelands published a series of false statements on the City of Lynwood Crime Page on Facebook asserting that Sol's construction activities were being performed in violation of law. Finally, Sol's trade libel cause of action (the ninth cause of action) alleged that the Lovelands made statements—to Sol's tenants, to the City of Lynwood,

and on social media sites—that Sol’s development was defective, inferior, substandard, or otherwise not in conformance with applicable building code standards.

C. *Sandoval’s Cross-Complaint*

A week after Sol filed its cross-complaint, Sandoval filed a cross-complaint against the Lovelands alleging causes of action for defamation-slander per se, defamation-libel per se, false light, and negligence.

In the defamation-slander per se cause of action, Sandoval alleged the Lovelands made a series of false assertions—in the form of statements made to City of Lynwood officials and law enforcement officers with the Los Angeles County Sheriff’s Department, as well as statements made at public forums and on social media sites—that Sandoval was authorizing illicit activities with respect to his management of Sol. In the defamation-libel per se cause of action, Sandoval alleged that the Lovelands published a series of posts on the City of Lynwood Crime Page on Facebook falsely asserting that Sol’s construction and business activities, which were managed by Sandoval, were being performed in violation of the law. Sandoval alleged in his false light cause of action that the Lovelands communicated to the general public at public hearings and on websites, blog posts, and other forums a series of false, unfair, and inaccurate depictions of Sandoval.

Finally, Sandoval alleged in his negligence cause of action that the Lovelands owed a duty to refrain from committing acts that would cause injury to Sandoval. He alleged that the Lovelands breached this

duty by filing false code enforcement reports and false crime reports asserting that Sandoval sanctioned unlawful conduct, and by posting false assertions regarding Sandoval's business and reputation on social media sites and blog posts.

D. *Special Motions to Strike*

1. *The Lovelands' Motions*

The Lovelands filed special motions to strike Sandoval's entire cross-complaint and the second, third, fourth, seventh, eighth, and ninth causes of action of Sol's cross-complaint (i.e., the interference, defamation, and trade libel claims). In both motions, the Lovelands argued that all of the causes of action at issue arise from conduct protected by section 425.16, that they cannot be held liable for any statements or complaints made to the City of Lynwood or the Los Angeles Sheriff's Department under Civil Code section 47, subdivision (b), and that neither Sol nor Sandoval could make a prima facie case as to any of the causes of action. They attached to each motion screen shots of the Facebook posts at issue, which Charlene stated in her declarations filed in support of each motion that she posted.

2. *Sol and Sandoval's Oppositions*

Both Sol and Sandoval argued in opposition to the motions that the Lovelands' conduct at issue involved private issues between private parties, and therefore none of the causes of action arise from conduct protected under section 425.16. They also argued that, in any event, there is a reasonable probability they will prevail on all of the causes of

action at issue. In support of their oppositions, Sol and Sandoval submitted several declarations.

a. *Abraham Sandoval's Declaration*

Sandoval submitted his own declaration, in which he described statements made by Charlene that he and/or Sol had acted or were acting unlawfully, and explained why those statements were false. For example, he declared that Charlene verbally stated to city officials that he and/or Sol “paid Councilmembers off” to get permits and approvals” for the development of the Sol property. To show the falsity of that statement, Sandoval declared that that the plans for the development complied with the zoning for the Sol property, that Sol obtained all required permits for the construction, underwent all required reviews by the various city and county departments and districts and received all required approvals, and that neither he nor Sol paid any funds to any member of the City of Lynwood City Council.

Sandoval also attached to his declaration copies of emails Charlene had sent to certain City officials in which she made disparaging statements about Sandoval and Sol. He also attached documents from the Los Angeles Sheriff's Department regarding reports that the Lovelands had made, as well as documents from the City of Lynwood Community Development Department regarding the department's investigation of complaints Charlene had made regarding the construction.

Finally, Sandoval stated that he learned from his tenants, the Flores family, that Charlene advised them to move to a different home,

and accused them of being drunk. He also learned that Charlene told the Flores family that they should contact the City Attorney because the landlord was charging them too much and the home was falling apart. He declared that, as a result of the disparaging statements Charlene made to the Flores family, Sol had to give them a \$300 per month discount on their rent to encourage them not to leave.

b. *Declarations of Luis Ceballos, Robert Esparza, Jorge Sandoval, and Jesus Ortiz*

Four of the declarations filed in opposition to the motions were from men who frequently were at the Sol property during the construction.⁵ Luis Ceballos declared that he observed Charlene make numerous derogatory statements and threats. For example, he stated that on a few of his visits, he observed Charlene screaming various epithets and insults at Sandoval regarding the construction, and saying that the construction was illegal and that Sandoval had paid Councilmembers off to get it approved. He also observed Charlene stating that she would have everyone at the construction site arrested, that Sandoval and Sol were “taking away her property,” and that the existing home on the Sol property was falling apart and violated the housing code.

⁵ Ceballos did not explain why he frequently was at the Sol property. Esparza, Jorge Sandoval, and Ortiz all worked on the construction in some capacity.

Robert Esparza, Jorge Sandoval, and Jesus Ortiz each declared that he also observed Charlene making many (or all) of statements that Luis Ceballos described in his declaration. In addition, Ortiz declared that he observed Charlene, with another individual, sending an aerial drone over the construction site and into the homes that were under construction. He also observed Charlene taking photographs of the construction workers.

c. *Yesenia Flores's Declaration*

Yesenia Flores, who lived in the existing house on the Sol property, declared that Charlene told her in mid-to-late 2017 that she was “overpaying” for renting that house and that she should look for a different house to rent or speak to the City Attorney of Lynwood. Flores also declared that Charlene complained to Flores that she and her family make too much noise and falsely accused them of being intoxicated.

d. *Igal Rosenberg's Declaration*

Igal Rosenberg, who owns a business in Lynwood, declared that in February 2018, he saw a posting by “Punki Loveland” (who he now knows is Charlene) on the “Crime Watch of Lynwood” private group page on Facebook. Rosenberg declared that he recognized that the photographs Charlene had posted depicted the construction on the Sol property, since that was the only property being developed in the area.

3. *Trial Court's Ruling*

The trial court granted the motions in part and denied them in part in a detailed written ruling. The court found that, to the extent Sol's and Sandoval's claims are based upon the Lovelands' statements or complaints to City officials or law enforcement, they fall within the scope of section 425.16. The court also found that the statements made in the Facebook posts and comments also fell within the scope of section 425.16, because the "Crime Watch of Lynwood" group page was a public forum, and the statements concerned an issue of public interest, noting that an issue of public interest is broadly construed as "any issue in which the public is interested." (Citing *Nygård, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1042.) With regard to the statements the Lovelands allegedly made to the Flores family, the court found they fall outside the scope of section 425.16, except to the extent the Lovelands encouraged the Flores family to contact the government with complaints, which the court found is protected under section 425.16.

Having found that section 426.16 applied to some of the claims alleged, the trial court determined whether Sandoval and Sol demonstrated a probability of prevailing on those claims. The court found that neither Sandoval nor Sol could show a probability of prevailing on any of their claims related to the Lovelands' statements made to City officials or law enforcement, because those statements are absolutely privileged under Civil Code section 47.

With regard to Sandoval's cross-complaint, the court found that Sandoval demonstrated a probability of prevailing as to all of his claims against Charlene that are not related to statements made to City

officials or law enforcement. However, the court found that Sandoval presented no evidence that Harry made any statements on Facebook or to people other than City officials or law enforcement, and therefore Sandoval did not demonstrate a probability of prevailing on his claims against Harry.

With regard to Sol's cross-complaint, the court found that the allegations in paragraph 31, subdivisions (a), (b), (c), and (e)—which are the same in all three interference claims⁶—as illuminated in the declarations filed in opposition to the motions to strike are based upon statements made by Charlene to Ysenia Flores, advising her to speak to the City Attorney of Lynwood, which conduct the trial court found was privileged under Civil Code section 47. Thus, the court found that Sol did not show a likelihood of prevailing on the interference claims to the extent the claims are based upon those subdivisions (but the subdivision alleging harassment remains because it falls outside the scope of section 425.16). The court applied to Sol's defamation claims the same analysis it applied to Sandoval's defamation claims, and

⁶ As noted, those subdivisions describe the following conduct by the Lovelands: “a. Continually advising [Sol's] TENANTS that the rental value pursuant to the rental contract with [Sol] was too exorbitant and must be renegotiated because TENANTS were getting ‘ripped off’; [¶] b. Continually advising [Sol's] TENANTS that TENANTS should be receiving a ‘discount’ on the rent because the home was in ‘deficient’ condition when in fact it has never been; [¶] c. Purposefully and maliciously filing false and frivolous complaints with the CITY with respect to false code enforcement violations for the purposes of disturbing or causing interference with [Sol's] contractual relations with its TENANTS; [¶] . . . [¶] e. Posting a series of false assertions of fact on postings, blogs, and other communications online intended to disturb [Sol's] relations with its TENANTS and future prospective tenants.”

reached the same conclusion, i.e., that Sol demonstrated a probability of prevailing as to all of his claims against Charlene that are not related to statements made to City officials or law enforcement. With regard to Sol's trade libel cause of action, the court found that the entire cause of action was based upon privileged petitioning activity, and therefore Sol could not show a probability of prevailing. Finally, as with Sandoval, the court found that Sol did not demonstrate a probability of prevailing on its claims against Harry.

Based upon these findings, the court ordered all allegations concerning petitioning of law enforcement and City officials stricken from all causes of action in Sandoval's cross-complaint, and from the second, third, fourth, seventh, and eighth causes of action in Sol's cross-complaint. The court also ordered all allegations in subdivisions (a), (b), (c), and (e) of paragraphs 31, 40, and 47, as well as the entire ninth cause of action for trade libel, in Sol's cross-complaint stricken. Finally, the court ordered all allegations concerning petitioning activity and Facebook posts stricken from both cross-complaints as against Harry. The court denied both motions to strike as to all other allegations.

The Lovelands timely filed a notice of appeal from the trial court's order to the extent it denied their motions. Although the court granted the Lovelands' motions in part, neither Sandoval nor Sol filed a notice of appeal from the order. Therefore, our decision is limited to determining whether the trial court erred to the extent it denied the special motions to strike; it has no effect upon the trial court's ruling striking allegations of the cross-complaints.

DISCUSSION

A. *Section 425.16 and the Standard of Review*

Section 425.16 “is designed to protect defendants from meritless lawsuits that might chill the exercise of their rights to speak and petition on matters of public concern. [Citations.] To that end, the statute authorizes a special motion to strike claims ‘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.’ (§ 425.16, subd. (b)(1).)” (*Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 883-884.) Such claims will be stricken “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).)

A special motion to strike may be directed at entire causes of action as pleaded in the complaint, or at specific allegations within a cause of action. As the Supreme Court explained in *Baral v. Schnitt* (2016) 1 Cal.5th 376, “[t]he anti-SLAPP procedures are designed to shield a defendant’s constitutionally protected *conduct* from the undue burden of frivolous litigation. It follows, then, that courts may rule on plaintiffs’ specific claims of protected activity, rather than reward artful pleading by ignoring such claims if they are mixed with assertions of unprotected activity.” (*Id.* at p. 393.)

A special motion to strike involves a two-step process. First, the party bringing the motion (usually the defendant, but in this case the cross-defendants) must demonstrate that the plaintiff’s (or, in this case,

cross-complainants’) claims arise from protected conduct in which the defendant has engaged. Second, if the defendant meets that burden, the burden shifts to the plaintiff to demonstrate that those protected claims “have at least ‘minimal merit.’” (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1061.)

“The defendant’s first-step burden is to identify the activity each challenged claim rests on and demonstrate that that activity is protected by [section 425.16]. . . . To determine whether a claim arises from protected activity, courts must ‘consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability.’ [Citation.] Courts then must evaluate whether the defendant has shown any of these actions fall within one or more of the four categories of “act[s]” protected by the anti-SLAPP statute.” (*Wilson v. Cable News Network, Inc., supra*, 7 Cal.5th at p. 884.)

Those four categories of protected acts are found in subdivision (e) of section 425.16. That subdivision provides that an “act in furtherance of a person’s right of petition or free speech . . . in connection with a public issue’ includes: (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; or (4) any other conduct in

furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.” (§ 425.16, subd. (e).)

We review the trial court’s determination on a special motion to strike de novo. Like the trial court, “[w]e consider “the pleadings, and supporting and opposing affidavits . . . upon which the liability or defense is based.” [Citation.] 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.]’ [Citation.]” (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 326.)

B. First Step: Do the Claims Arise From Protected Activity?

In this case, the trial court struck certain allegation from all of the challenged causes of action in both cross-complaints, but left the remainder of those causes of action intact (except for Sol’s claim for trade libel, which the trial court struck in its entirety). In their appellants’ opening brief, the Lovelands contend the trial court erred by failing to strike Sandoval’s entire cross-complaint and the entirety of the second, third, fourth, seventh, and eighth causes of action in Sol’s cross-complaint, and by failing to strike all challenged causes of action as to Harry. In doing so, the Lovelands address only the second step of the anti-SLAPP analysis, and do not address whether the claims that remain “aris[e] from any act of [the Lovelands] in furtherance of [their]

right of petition or free speech . . . in connection with a public issue.”⁷ (§ 425.16, subd. (b)(1).) On our de novo review of the trial court’s ruling, however, we must look at both steps of the analysis, because if the conduct at issue does not fall within one of the four categories set forth in subdivision (e) of section 425.16, the court has no authority to strike the remaining claims.

1. *Defamation Claims*

After the trial court struck all allegations regarding statements the Lovelands made to law enforcement and City officials, the conduct upon which all of Sandoval’s and Sol’s defamation claims arise consists of Charlene’s posts and comments on Facebook and statements she made to workers and others. We will address the Facebook posts and comments separately from the statements to workers and others.

a. *Facebook Posts and Comments*

The trial court found that the Facebook posts and comments were protected under section 425.16 as a “written . . . statement or writing made in a place open to the public or a public forum in connection with an issue of public interest.” (§ 425.16, subd. (e)(3).) While we agree that the Crime Watch of Lynwood group page on Facebook is a public forum, having reviewed the posts and comments we conclude that

⁷ Although Sandoval and Sol did not provide a detailed first step analysis in their respondents’ brief, they did argue that the trial court correctly found that certain conduct alleged in the cross-complaints did not fall within the purview of section 425.16.

Charlene’s posts and comments concern a private, rather than a public issue.

“Section 425.16 does not define ‘an issue of public interest.’ Nevertheless, the statute requires the issue to include attributes that make it one of public, rather than merely private, interest. [Citation.] A few guiding principles can be gleaned from decisional authorities. For example, ‘public interest’ is not mere curiosity. Further, the matter should be something of concern to a substantial number of people. Accordingly, a matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest. Additionally, there should be a degree of closeness between the challenged statements and the asserted public interest. The assertion of a broad and amorphous public interest is not sufficient. Moreover, the focus of the speaker’s conduct should be the public interest, not a private controversy. Finally, a defendant charged with defamation cannot, through his or her own conduct, create a defense by making the claimant a public figure. Otherwise private information is not turned into a matter of public interest simply by its communication to a large number of people. [Citation.]” (*Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 736; see also *Weinberg v. Feisel* (2003) 110 Cal.App.4th 1122, 1132-1133.)⁸

⁸ We acknowledge that we stated in *Nygård, Inc. v. Uusi-Kerttula* (as the trial court noted in finding that the Facebook posts and comments involved a public issue) “that ‘an issue of public interest’ within the meaning of section 425.16, subdivision (e)(3) is *any issue in which the public is interested*.” (*Nygård, Inc. v. Uusi-Kerttula, supra*, 159 Cal.App 4th at p. 1042.) But that definition must be understood in the context of the facts of that case. As we explained, the case involved statements made in an interview published in a Finnish magazine about “a prominent businessman and celebrity of Finnish

With this guidance, we turn to the Facebook posts and comments at issue in the present case. In her first post, on December 20, 2017, Charlene (using the name “Punki Loveland”) posted photographs of what appears to be a fence and wrote: “They trying to take over my property and putting my turtles and eggs at risk and the city of Lynwood don’t care.” All of her comments on the post pertain to her complaints about the effect of the construction on her property, or are disparaging remarks about the owner of the Sol property (she does not name Sandoval or Sol, nor does she provide any address), or discuss the possibility that she will have to file a lawsuit to stop the encroachment into her property. In her second post, on February 25, 2018, Charlene posted photographs of a cinderblock fence being built and wrote: “Now they tore up more of our property even with no trespassing signs.” Her comments on the post consist of complaints about the construction and her dispute over her property line and the alleged encroachment, as well as disparaging comments regarding the owner of the Sol property (again, she does not name the owner, but one other commenter named Sandoval).

Clearly, these posts and comments concern a private dispute between the Lovelands and Sol/Sandoval regarding alleged damage to and encroachment upon the Loveland property caused by the

extraction” about whom there was “‘extensive interest’ . . . among the Finnish public,” and there was evidence that there was “‘particular interest among the magazine’s readership in ‘information having to do with Mr. Nygård’s famous Bahamas residence which has been the subject of much publicity in Finland.’” (*Ibid.*)

construction on the Sol property. That others might be curious about the dispute or the City of Lynwood's reaction to the Lovelands' complaints, or that it was posted on a Facebook group page with a large following does not turn this private dispute into a matter of public interest. (*Hailstone v. Martinez, supra*, 169 Cal.App.4th at p. 736.) Therefore, the Facebook posts and comments are outside the scope of section 425.16 and cannot be the subject of a motion to strike. Accordingly, the trial court did not err in denying the motions to strike the defamation claims to the extent they arose from the Facebook posts and comments.

b. *Statements to Workers and Others*

As set forth in the declarations filed in opposition to the Lovelands' motions, Sandoval's and Sol's claims for slander were based in part on oral statements Charlene made to, or in front of, Flores, Ceballos, Esparza, Jorge Sandoval, and Ortiz. According to Flores, Charlene told her she was being charged too much for rent and that she should look for a different house to rent or speak to the City Attorney of Lynwood. As set forth in the declarations of the first four declarants, those declarants observed Charlene say that (1) the construction was illegal; (2) everyone there was subject to arrest; (3) Sandoval and Sol were taking her property; (4) the existing home on the property in which the Flores family was living was falling apart and violated the housing code; and (5) Sandoval had paid off members of the Lynwood City Council to get the project approved. The trial court did not address

these statements in the first step of its analysis of the Lovelands' motions with regard to the slander claims.

On appeal, the Lovelands contend the trial court erred by not striking the allegations regarding these statements, arguing that the statements do not amount to slander per se. But the Lovelands never address whether the statements fall within one of the four categories of protected acts under section 425.16, subdivision (e). We conclude that, with the exception of the last statement—that Sandoval had paid off members of the City Council—none of the statements fall within any of the categories.

We begin with Charlene's statements to Flores that her rent was too high and that she should talk to the City Attorney. There are only two possible categories in section 425.16, subdivision (e) under which this statement could fall: subdivision (e)(2), i.e., "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"; or subdivision (e)(4), i.e., "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)(2), (e)(4).) Neither category fits here.

The statement does not fall under subdivision (e)(2) because the amount of rent Flores pays (or the condition of the home in which she lives) is not an issue under consideration by a legislative, executive, or judicial body. Charlene's suggestion that Flores *make* it such an issue does not bring her statement within protection under that subdivision.

Nor does it bring Charlene's statement within the protection of the catch-all provision of section 425.16, subdivision (e)(4), because that provision requires that the statement be made in connection with an issue of public interest, and Flores's rent and the condition of her house is solely a private issue.⁹

With regard to the statements recounted by Ceballos, Esparza, Jorge Sandoval, and Ortiz, those statements would be protected, if at all, under subdivision (e)(4) of section 425.16 because the statements were not made in connection with any official proceedings, nor were they made in a public forum. However, statements made to a single person (or a small group of people) regarding the asserted illegality of the construction and the encroachment upon the Lovelands' property do not concern any issue of public interest; they concern a private dispute between the Lovelands and Sol/Sandoval. The only statement that could be construed as one concerning a public interest is Charlene's statement that Sandoval paid off members of the City Council to get the required approvals for Sol's project. Therefore, this is the only allegation in any of the defamation claims that may be subject to a special motion to strike, unless Sandoval and Sol demonstrated a probability of success (which we discuss in section C, *post*). As to the remaining allegations, the trial court properly denied the Lovelands' motions.

⁹ We recognize that the trial court reached a different conclusion with regard to Sol's interference claims, and struck allegations that related to or were dependent upon those statements. Our finding here, however, has no effect on that ruling because Sol did not appeal from the ruling.

2. *Sandoval's False Light and Negligence Claims*

Sandoval's false light and negligence claims are based upon the same conduct as his defamation claims. Our first-step analysis and conclusions are the same for the false light and negligence claims as they were for the defamation claims. Thus, the only allegation in either claim that may be subject to a special motion to strike, unless Sandoval and Sol demonstrated a probability of success, is the allegation that Charlene told individuals that Sandoval paid off members of the City Council.

3. *Sol's Interference Claims*

As noted, the trial court granted the Lovelands' motion with regard to certain allegations in each of Sol's interference claims, leaving only the allegations that the Lovelands intentionally harassed the Flores family and admonished them to move out of the house they were renting.¹⁰ Yesenia Flores stated in her declaration that Charlene told

¹⁰ In their appellants' opening brief, the Lovelands argue all of the interference causes of action should have been stricken in their entirety, but that argument is based upon a misunderstanding of the trial court's order. The trial court found that the protected allegations in those causes of action were the allegations relating to petitioning law enforcement or City officials, Facebook posts, and Charlene's statement to Flores that she was overpaying rent and should speak to the City Attorney. *As to those allegations*, the court found that Sol did not show a likelihood of prevailing. But the interference causes of action also included the following alleged conduct as a basis for liability: "Intentionally harassing TENANTS and admonishing TENANTS to move from the PROPERTY through a series of text messages, Facebook messages, verbal comments, and other communications." In its ruling, the trial court specifically found that the interference causes of action based upon these harassment allegations remain.

her she needed to look for another home to rent and that she and her family make too much noise, and falsely accused her of being intoxicated. None of these statements concern an issue of public interest under section 425.16, subdivision (e)(4), the only category of protected conduct that could possibly apply. Therefore, the interference causes of action based upon the harassment allegations are not subject to a special motion to strike.

C. *Second Step: Did Sandoval and Sol Demonstrate a Probability of Prevailing?*

As detailed, the only claims arguably within the scope of section 426.16 that remained after the trial court's ruling are claims based upon Charlene's statements to various people asserting that Sandoval paid members of the Lynwood City Council to obtain approvals for Sol's project. Thus, those are the only claims for which the burden shifted to Sandoval and Sol to demonstrate a probability of success.

To support those claims, Sandoval and Sol produced evidence that the Sol property was zoned R-3, which allows high density, multi-family residential units on the property. Therefore, Sol was entitled as a matter of right to construct the six new residential units. Sandoval and Sol also produced evidence that Sol's project underwent all required reviews from the various city and county departments and received all required building permits. Finally, Sandoval stated in his declaration that neither he nor Sol "paid any funds whatsoever to any Councilmember for the City of Lynwood."

The Lovelands presented no evidence that would defeat Sandoval's and Sol's evidence. Viewing the evidence in favor of Sandoval and Sol, as we must (*Flatley v. Mauro, supra*, 39 Cal.4th at p. 326), we conclude a reasonable trier of fact could find that Charlene knew that her accusation was false, or did not have any reasonable basis to believe it was true. Therefore, we conclude that Sandoval and Sol carried their burden on the Lovelands' motions to strike their defamation claims, and Sandoval's false light and negligence claims, to the extent they were based upon Charlene's statements that Sandoval paid off members of the City Council. Accordingly, the trial court's denial of the special motions to strike those claims must be affirmed.

DISPOSITION

The trial court's order denying in part the Lovelands' special motions to strike is affirmed. Sandoval and Sol shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

COLLINS, J.

CURREY, J.