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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

EDIK GHADIMIAN,

Plaintiff and Respondent,

v.

ZIYAD BEDASS,

Defendant and Respondent.

B269175

(Los Angeles County
Super. Ct. No. BC565055)

APPEAL from orders of the Superior Court of Los Angeles County.
Terry A. Green, Judge. Affirmed.

Law Offices of Motaz M. Gerges, Motaz M. Gerges for Plaintiff and
Appellant.

Sepulveda Sanchez Law. Gabriel Sepulveda-Sanchez for Defendant and
Respondent.

Edik Ghadimian appeals from an order granting respondent Ziyad Bedass d.b.a. King Lien Services' (KLS) special motion to strike Ghadimian's complaint against it with prejudice pursuant to Code of Civil Procedure section 425.16,¹ hereinafter the anti-SLAPP² statute. Ghadimian also appeals from the trial court's order granting KLS's motion for attorney fees under the anti-SLAPP statute. (§ 425.16, subd. (c).) In June 2014, Ghadimian's vehicle caught fire and stopped working, and was transferred to Master Works Auto Body, Inc. (Master Works), pending inspection by Ghadimian's insurance company. When the insurance company requested that the vehicle be transferred to another location, Master Works refused to release the vehicle without payment of storage fees. Ghadimian filed suit against Master Works and its owner for damages. He later amended his complaint to add KLS as a defendant, after discovering that KLS had filed a notice of lien sale related to the vehicle on behalf of Master Works with the Department of Motor Vehicles (DMV). We conclude the trial court properly granted KLS's motion to strike because the act of filing a lien with DMV is protected activity under the anti-SLAPP statute. We also conclude the trial court did not abuse its discretion in granting KLS's motion for attorney fees under the anti-SLAPP statute. Accordingly, we affirm.

BACKGROUND

In June 2014, Ghadimian's 2003 Toyota Highlander (Vehicle) caught fire and stopped working, and was towed to a facility in North Hollywood. On

¹ All further statutory references are to the Code of Civil Procedure unless otherwise stated.

² "SLAPP is an acronym for 'strategic lawsuit against public participation.'" (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 732, fn. 1.)

July 20, 2014, the Vehicle was transferred to Master Works, which provided an estimate of \$4,430.27 to repair the damage caused by the fire. Ghadimian, through his counsel, advised Master Works that his insurance company would not authorize any repairs on the Vehicle until it inspected the Vehicle. The insurance company asked that the Vehicle be inspected at a Toyota dealership. On September 25, 2014, when a tow truck arrived at Master Works to transfer the Vehicle to a Toyota dealership, Master Works refused to release the Vehicle, claiming it was owed storage fees.

On November 26, 2014, Ghadimian filed a complaint against Master Works and its owner alleging they engaged in a fraudulent scheme by which they agreed to receive the Vehicle for an estimate and repair in order to manufacture a “fake and phony” invoice for storage fees and to extort money from Ghadimian.³ He also alleged a lien was recorded against the Vehicle in the amount of \$5,670 with the DMV.

On January 20, 2015, Ghadimian filed an amendment to his complaint, adding KLS as a defendant.

On March 23, 2015, KLS filed a special motion to strike the complaint pursuant to the anti-SLAPP statute, arguing it was being sued for exercising its constitutionally protected rights and that Ghadimian could not succeed on the merits of his claims against it.

³ Ghadimian’s complaint asserted causes of action for: (1) fraud and deceit; (2) theft, embezzlement and conversion; (3) breach of fiduciary duty; (4) unjust enrichment; (5) deceptive trade practices; (6) negligent entrustment; (7) civil conspiracy to commit fraud; (8) violation of Civil Code § 3068; (9) violation of Business and Professions Code § 17200 et seq.; (10) intentional infliction of emotional distress, (11) fraudulent concealment; (12) fraud by intentional and negligent misrepresentation; (13) breach of oral agreement; and (14) breach of the covenant of good faith and fair dealing.

Thereafter, Ghadimian filed a motion for a preliminary injunction preventing the sale of the Vehicle.⁴ On March 27, 2015, the trial court granted the motion and enjoined all defendants from transferring any right, title or interest in the Vehicle.

On June 24, 2015, the trial court granted KLS's anti-SLAPP motion, but did not include a statement of decision.⁵ On November 16, 2015, KLS filed a motion for attorney fees. On December 3, 2015, the trial court granted the motion and awarded attorney fees in favor of KLS in the amount of \$11,000.

On December 21, 2015, Ghadimian filed a notice of appeal.

CONTENTIONS

Ghadimian contends the trial court erred in granting KLS's anti-SLAPP motion because KLS failed to meet the elements of the anti-SLAPP statute. He contends KLS's "unlawful activities and extortionist demands" are not in the interest of the public, and the trial court's granting of the preliminary injunction establishes he will prevail in his action against KLS. Ghadimian also contends that because KLS is a commercial lien service company, the exemption from reliance on the anti-SLAPP statute contained in section 425.17 applies, preventing KLS from bringing an anti-SLAPP

⁴ Ghadimian did not include as part of the record on appeal its motion for a preliminary injunction or any documents related thereto.

⁵ The anti-SLAPP statute does not require that a trial court's ruling on an anti-SLAPP motion be supported by a statement of decision pursuant to section 632. (*Lien v. Lucky United Properties Investment, Inc.* (2008) 163 Cal.App.4th 620, 623-625; but see *DuPont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal.App.4th 562, 564.)

motion.⁶ Ghadimian further contends KLS's motion for attorney fees should have been denied because it was untimely, failed to "comport with motion rules requirements," and KLS's counsel did not provide any billing invoices to support an award of \$11,000.

DISCUSSION

I. Standard of Review

We review de novo an order granting or denying a motion to strike under the anti-SLAPP statute. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325.) We consider "the pleadings, and supporting and opposing affidavits 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."" (*Flatley v. Mauro*, at p. 326.)

⁶ Ghadimian raises several contentions on appeal regarding asserted procedural defects with respect to KLS's anti-SLAPP motion. Ghadimian claims the anti-SLAPP motion should have been denied because: (1) KLS's reply papers were served and filed four court days prior to the June 24, 2015 hearing date on the motion rather than the required five court days (§ 1005, subd. (b)); and (2) the memorandum of points and authorities exceeded 10 pages and did not contain a table of contents or a table of authorities (Cal. Rules of Court, rule 3.1113(f)). These contentions fail because Ghadimian's claimed defects are minor and do not prevent the trial court from considering the contents of the briefs. (E.g., *Kapitanski v. Von's Grocery Co.* (1983) 146 Cal.App.3d 29, 32-33 [court retains discretion to consider late-filed papers]; cf. Cal. Rules of Court, rules 3.1300(d) [no paper may be rejected for filing on the ground it was untimely], rule 3.1113(g) [oversized memorandum is considered in the same manner as a late-filed paper].) Ghadimian also fails to argue that he was actually prejudiced by, or that the court abused its discretion in considering, the late-filed papers. Thus, Ghadimian's claims regarding asserted procedural defects are without merit.

We further observe that the anti-SLAPP statute is to be broadly construed. (§ 425.16, subd. (a).)

We review a trial court's attorney fee award for abuse of discretion. (*Raining Data Corp. v. Barrenechea* (2009) 175 Cal. App.4th 1363, 1375.) "A trial court's attorney fee award will not be set aside 'absent a showing that it is manifestly excessive in the circumstances.'" (*Ibid.*)

II. The Trial Court Did Not Err in Granting KLS's Motion To Strike Ghadimian's Complaint Under the Anti-SLAPP Statute

The anti-SLAPP statute provides, inter alia, that a "cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).)

In determining whether an action is subject to dismissal under the anti-SLAPP statute, we engage in a two step process. "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. (§ 425.16, subd. (b)(1).) 'A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (e)'⁷ [Citation]. If the court finds that such a showing

⁷ Section 425.16, subdivision (e) states in relevant part: An "act in furtherance of a person's right of petition or free speech under the United States or California Constitution 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, [or] (2) any written or oral statement or writing made in connection

has been made, it must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim. [Citations.]” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) “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 being stricken under the statute.” (*Id.* at p. 89, original italics.)

A. Protected Activity

Our Supreme Court held that “[t]he constitutional right to petition . . . includes the basic act of filing litigation or otherwise seeking administrative action.”” (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1115; see also *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 274 [“[Defendant’s] allegedly actionable conduct consisted of her complaints to the Department of Labor. Again, such statements are within the protective purview of the [anti-SLAPP statute.]”]; *Premier Medical Management Services, Inc. v. California Ins. Guarantee Assn.* (2006) 136 Cal.App.4th 464, 477 [Defendants’ handling of liens and claims through the workers’ compensation system is within the scope of the anti-SLAPP statute].) “The Legislature’s stated intent is best served . . . by a construction of section 425.16 that broadly encompasses participation in official proceedings, generally, whether or not such participation remains strictly focused on ‘public’ issues.” (*Briggs*, at p. 1118.) Thus, we conclude KLS’s act of filing a notice of lien sale with DMV in order to seek its authorization to conduct a sale of the Vehicle falls squarely within the ambit of activity protected by the anti-SLAPP statute.

with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law. . . .”

Ghadimian’s contention that KLS failed to follow statutory guidelines when filing the notice of lien sale does not affect the applicability of the anti-SLAPP statute to this action. “[A]n activity [is] not protected as a matter of law only when the evidence *conclusively* establishe[s] the illegality.” (*Park 100 Investment Group II v. Ryan* (2009) 180 Cal.App.4th 795, 806, original italics.) Here, the filing of the notice of lien sale was authorized by law. (Civ. Code, § 3071, subd. (a) [“A lienholder shall apply to the department for the issuance of an authorization to conduct a lien sale pursuant to this section for any vehicle with a value determined to be over four thousand dollars (\$4,000).”].) Thus, KLS’s act of filing the notice with DMV remains activity protected under the anti-SLAPP statute. We therefore conclude KLS satisfied its burden of showing the challenged action is one arising from protected activity.

B. Probability of Prevailing on the Claims

Ghadimian contends he “has already prevailed on the merits” of his claims because the trial court entered an injunction enjoining defendants from selling the Vehicle. We disagree. “Because the issues involved in consideration of a preliminary injunction are different from those involved in an anti-SLAPP suit motion to strike, the granting of a preliminary injunction in favor of the plaintiff does not have collateral estoppel or res judicata effect as against a subsequent anti-SLAPP suit motion.” (*Lam v. Ngo* (2001) 91 Cal.App.4th 832, 836.) A plaintiff must still make “a prima facie showing of facts which, if proved at trial, support a favorable judgment[.]” (*Id.* at p. 843.)

Ghadimian contends the “core of [] KLS’[s] wrongful conduct alleged here is that KLS prepared and produced a notice of lien sale without following any statutory guidelines which placed [him] in position to lose his Vehicle to a fake lien sale.” The problem with this contention is that there

are no such allegations contained in the complaint. Ghadimian appears to blame the trial court for this deficiency contending it “failed to permit [him] to amend as a matter of absolute right.” However, when reviewing an anti-SLAPP motion, “the standard is akin to that for summary judgment or judgment on the pleadings. We must take the complaint as it is.” (*Premier Medical Management Services, Inc.*, *supra*, 136 Cal.App.4th at p. 476.) Given the absence of wrongful conduct alleged in the complaint against KLS, we conclude Ghadimian failed to demonstrate a probability of prevailing on his claims.

C. Commercial Speech Exemption Under Section 425.17(c)

Section 425.17, subdivision (c)⁸ shields from the anti-SLAPP statute a cause of action which “arises from a statement or conduct that ‘consists of representations of fact about that person’s or a business competitor’s business operations, goods, or services, that is made for the purpose of obtaining approval for, promoting, or securing sales or leases of, or commercial transactions in, the person’s goods or services.’” (*Simpson Strong-Tie Co.*,

⁸ Section 425.17(c) provides: “Section 425.16 does not apply to any cause of action brought against a person primarily engaged in the business of selling or leasing goods or services, including, but not limited to, insurance, securities, or financial instruments, arising from any statement or conduct by that person if both of the following conditions exist: [¶] (1) The statement or conduct consists of representations of fact about that person’s or a business competitor’s business operations, goods, or services, that is made for the purpose of obtaining approval for, promoting, or securing sales or leases of, or commercial transactions in, the person’s goods or services, or the statement or conduct was made in the course of delivering the person’s goods or services. [¶] (2) The intended audience is an actual or potential buyer or customer, or a person likely to repeat the statement to, or otherwise influence, an actual or prospective buyer or customer. . . .” (*Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 22.)

Inc., supra, 49 Cal.4th 12 at p. 26.) The burden of proof of establishing the applicability of section 425.17(c) is on the plaintiff. (*Ibid.*)

Ghadimian contends KLS's conduct is exempt from application of the anti-SLAPP statute because KLS is "in the commercial business of placing a lien on the vehicle; reporting it to the DMV; and subsequently engaging in sale of the vehicle subject to the lien." However, none of Ghadimian's claims in the complaint are based on any representations or advertisements made by KLS concerning any of its services. Instead, KLS's sole alleged conduct is the act of filing the notice of lien sale with DMV. Accordingly, KLS's conduct is not within the "commercial speech" exemption of section 425.17(c) and it may seek application of the anti-SLAPP statute to its conduct here.

III. The Trial Court Did Not Err in Granting KLS's Motion For Attorney Fees Under the Anti-SLAPP Statute

Ghadimian contends KLS's motion for attorney fees should be denied because it was untimely. Ghadimian argues KLS was required to file its attorney fees motion within 60 days of the June 24, 2015 order granting KLS's anti-SLAPP motion, that is, by August 23, 2015. We disagree.

A motion seeking attorney fees must be served and filed within the time limits for filing a notice of appeal. (*Mallard v. Progressive Choice Ins. Co.* (2010) 188 Cal.App.4th 531, 545.) "[A] notice of appeal must be filed on or before 60 days after service of a document entitled 'Notice of Entry' of the order granting the anti-SLAPP motion by the superior court clerk or a party; otherwise, the notice of appeal must be filed on or before 180 days after the entry of the order granting the anti-SLAPP motion." (*Ibid.*; Cal. Rules of Court, rules 3.1702(b), 8.104(a) & (c).) A minute order entered by the trial court can trigger the 60-day period within which a notice of appeal must be filed as long as it contains the language "Notice of Entry." (*Alan v. American*

Honda Motor Co., Inc. (2007) 40 Cal.4th 894, 905 “[W]e conclude that [Cal. Rules of Court] rule 8.104(a)(1) does indeed require a single document—either a ‘Notice of Entry’ so entitled or a file-stamped copy of the judgment or appealable order]; *Sunset Millennium Associates, LLC v. Le Songe, LLC* (2006), 138 Cal.App.4th 256, 260 “[T]he failure to entitle the document using the crucial notice of entry language is not a matter of mere form; [Cal. Rules of Court,] rule 2(a)(1) explicitly without any ambiguity requires the document be ‘entitled’ notice of entry.”].) Here, the minute order granting KLS’s anti-SLAPP motion is neither file stamped nor contains the language “Notice of Entry.” KLS therefore had 180 days from the trial court’s June 24, 2015 order to file its motion, that is, by December 21, 2015. Accordingly, KLS’s motion for attorney fees filed on November 16, 2015, was timely.⁹

Ghadimian also contends the attorney fees motion should be denied because it did not comport with section 1005, subdivision (b), which requires that moving papers shall be filed at least 16 court days before a hearing date. The motion was filed on November 16, 2015, with a scheduled hearing date of December 3, 2015.

“It is well settled that the appearance of a party at the hearing of a motion and his or her opposition to the motion on its merits is a waiver of any defects or irregularities in the notice of motion. [Citations.] This rule applies even when no notice was given at all. [Citations.] Accordingly, a party who appears and contests a motion in the court below cannot object on appeal or by seeking extraordinary relief in the appellate court that he had no notice of

⁹ Ghadimian claims KLS failed to file a memorandum of costs and therefore no costs should be awarded. KLS’s motion for attorney fees did seek the award of \$475 in costs for filing fees. The trial court awarded only attorney fees in granting KLS’s motion and therefore this contention is moot.

the motion or that the notice was insufficient or defective.’ [Citations.]” (*Carlton v. Quint* (2000) 77 Cal.App.4th 690, 697.) Ghadimian filed not one, but two oppositions to KLS’s motion for attorney fees, and his counsel appeared and argued at the December 3, 2015 hearing. He also never requested a continuance of the hearing or claimed he was prejudiced by the insufficient notice. Thus, we conclude Ghadimian waived any claim of inadequate notice with respect to KLS’s attorney fees motion.

Ghadimian further contends the attorney fees motion should be denied because it “is excessive in nature and is completely devoid of any supporting evidence as to amount of fees related to the [anti-SLAPP] motion.”

“A [party] . . . can carry its burden of establishing its entitlement to attorney fees by submitting a declaration from counsel instead of billing records or invoices.” (*Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 487–488.) “In challenging attorney fees as excessive because too many hours of work are claimed, it is the burden of the challenging party to point to the specific items challenged, with a sufficient argument and citations to the evidence. General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice.” (*Premier Medical Management Services, Inc.* (2008) 163 Cal.App.4th 550, 564; see also *Mallard v. Progressive Choice Ins. Co.*, *supra*, 188 Cal.App.4th at p. 545 [An “‘assertion [that] is unaccompanied by any citation to the record or any explanation of which fees were unreasonable or duplicative’ is insufficient to disturb the trial court’s discretionary award of attorney fees.”].)

KLS submitted a declaration from its counsel describing the number of hours spent and rate charged for preparing its anti-SLAPP motion. Ghadimian, however, does not provide any explanation of which fees he

considers exorbitant. Accordingly, Ghadimian failed to show the trial court abused its discretion in granting KLS's motion for attorney fees.

DISPOSITION

The orders are affirmed. KLS is to recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

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GOODMAN, J.*

We concur:

CHAVEZ, Acting P.J.

HOFFSTADT, J.

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