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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JAGUAR LAND ROVER NORTH
AMERICA, LLC,

Plaintiff and Appellant,

v.

LUCY KASPARIAN et al.,

Defendants and Appellants;

VAGRAM BAGDASARYAN,

Defendant and Respondent.

B260613

(Los Angeles County
Super. Ct. No. BC531993)

APPEAL from orders of the Superior Court of Los Angeles
County, Michael Johnson, Judge. Affirmed.

The Scali Law Firm, Christian J. Scali, Robert D. Daniels,
Dominique J. Nasr, and Jasmin B. Bhandari for Plaintiff and
Appellant.

Yee & Belilove, Steven R. Yee, Steve R. Belilove, Kevin H. Sun, and Richard B. Azada for Defendants and Appellants Lucy Kasparian and Lemon Law Center.

Manning & Kass, Ellrod, Ramirez, Trester, David Gorney and Kevin H. Louth for Defendant and Respondent Vagram Bagdasaryan.

In this malicious prosecution action, plaintiff and appellant Jaguar Land Rover North America, LLC (Jaguar) appeals orders granting special motions to strike (Code Civ. Proc., § 425.16) brought by defendant and respondent Vagram Bagdasaryan (Bagdasaryan) and his attorneys, defendants and respondents Lucy Kasparian (Kasparian) and California Lemon Law Center, Inc. (Center), and awarding Kasparian and Center their attorney fees.¹

Kasparian and Center cross-appeal insofar as the trial court awarded them attorney fees and costs in the sum of \$4,027.50, which they contend is inadequate.

We conclude the denial of Jaguar's motion for nonsuit in the underlying action precludes Jaguar in the instant action from establishing that the underlying action was brought without probable cause. Therefore, the trial court properly granted the special motions to strike Jaguar's complaint for malicious prosecution. We also affirm the \$4,027.50 award to Kasparian and Center, which is the precise sum that they requested.

¹ An order granting a special motion to strike, or anti-SLAPP motion, is appealable. (Code Civ. Proc., § 425.16, subd. (i), § 904.1, subd. (a)(13).) All further statutory references are to the Code of Civil Procedure, unless otherwise specified.

FACTUAL AND PROCEDURAL BACKGROUND²

In August 2007, Bagdasaryan leased the subject vehicle, a Land Rover, for a monthly payment of \$1,630.09. Two months later, he had the vehicle taken to Symes Land Rover of Pasadena, complaining that the warning light for the antilock brake system (ABS) was illuminated. Symes replaced the ABS module.

Two months later, the ABS light was on again, and Bagdasaryan had the vehicle taken to Land Rover Encino. Guzelian, a technician at the dealership, opined that the vehicle had been tampered with. The service invoice noted “outside source tampering. . . . Removed all road wheels and found evidence of tampering at and around rear wheel speed sensors. Partially removed rear wheel well trims to inspect connectors and found both rear wheel speed sensor connectors with greasy finger marks. Removed both rear connectors and found left rear connector with evidence of tampering near pin and environmental seal.”

Pat Dahlberg at Jaguar agreed with the findings of tampering. He instructed “no further warranty repairs are to be performed. We will be placing a temporary warranty hold on the vehicle until the customer brings the vehicle into factory condition. Failure [of] the customer to bring the vehicle back into factory condition or further signs of tampering could result in a complete and permanent warranty hold.”

Bagdasaryan was advised that the dealership would repair the vehicle for \$579.94. He declined.

² The factual summary is developed from the clerk’s transcript.

1. *Bagdasaryan's underlying lawsuit against Jaguar.*

In May 2011, Bagdasaryan filed suit against Jaguar for violation of the Song–Beverly Consumer Warranty Act (the Act) (Civ. Code, § 1790 et seq.), also known as California's lemon law. (*Cummins, Inc. v. Superior Court* (2005) 36 Cal.4th 478, 485.)

The complaint asserted causes of action for breach of the implied warranty of merchantability, breach of the implied warranty of fitness, sale of defective merchandise without disclosing defects, breach of express warranty, failure to promptly repurchase product, and failure to commence repairs within a reasonable time and to complete them within 30 days. Among other things, the complaint sought damages of \$107,677.11, as well as civil penalties of double that amount and attorney fees pursuant to the Act.

Jaguar responded with a general denial and asserted as affirmative defenses that Bagdasaryan misused the vehicle and that the alleged defects were caused by his unauthorized or unreasonable use.

During trial and before the case went to the jury, Jaguar orally moved for nonsuit, arguing that it could not be held liable for a civil penalty under the Act because there was insufficient evidence that Dahlberg's decision "either not to repair the ABS light or not to repurchase the vehicle was in bad faith. I think the evidence is clear from all his testimony, in good faith, based upon the email that Mr. Guzelian forwarded to him, the photographs of the greasy fingerprints, the environmental seal, the wires crossed, all of that combined together gave him a reasonable and good faith belief as a matter of law that the car had been tampered with, and therefore, there was no bad faith." The trial court (Judge Brenner) denied the nonsuit motion.

The jury subsequently returned a defense verdict on both of Bagdasaryan's claims: failure to repair after a reasonable number of repair attempts; and failure to commence repairs within a reasonable time.

2. *The instant malicious prosecution action.*

a. *Jaguar's complaint.*

On December 31, 2013, Jaguar filed a complaint for malicious prosecution against Bagdasaryan, Kasparian, and Center, alleging: the underlying action was pursued to a legal termination in Jaguar's favor; the defendants acted without probable cause in initiating their claims, in that they brought the underlying action "with knowledge that the subject vehicle had been tampered with in such a manner as to engineer an artificial nonconformity;" and the underlying action was brought with malice, for the improper purpose of reaping financial benefit and forcing settlement of a fraudulent claim under the Act.

b. *Special motions to strike.*

Kasparian and Center, and Bagdasaryan, brought separate anti-SLAPP motions, contending, inter alia, that Jaguar could not meet its burden of showing a reasonable probability of success on the merits of its malicious prosecution claim because the denial of Jaguar's nonsuit motion in the underlying action established probable cause for prosecuting the action.

c. *Jaguar's opposition to the special motions to strike.*

Jaguar argued the denial of its nonsuit motion did not establish probable cause because that motion was only made on Bagdasaryan's civil penalty claims, not on the issues of liability or causation. Jaguar also asserted that there was no support for the proposition that denial of a nonsuit motion establishes probable cause in a lemon law case. Jaguar also contended the

fraud exception to the interim adverse judgment rule should apply because the nonsuit ruling was obtained by Bagdasaryan's fraudulent conduct in putting on fabricated evidence of a defect, and because Bagdasaryan perjured himself in the underlying trial when he testified to purported defects in the vehicle.³

d. *Trial court's ruling.*

After hearing the matter and taking it under submission, the trial court (Judge Michael Johnson) granted both anti-SLAPP motions. On the malicious prosecution element of probable cause, the trial court ruled as follows:

"Jaguar has argued that Defendants did not have probable cause to maintain the Lemon Law action because the vehicle defects were the product of deliberate tampering. The verdict form in the case made no specific finding on this issue. Instead, the jury addressed Bagdasaryan's claims in a general verdict format that gives no indication of the reasons for the jury's determinations. . . .

"There is a significant obstacle to Jaguar's argument: the trial court in the Lemon Law action denied Jaguar's motion for nonsuit and permitted Bagdasaryan's claims to be presented to the jury. Under a variation of the 'interim adverse judgment rule,' an interim ruling on a motion can establish the existence of probable cause, even when the final judgment is unfavorable. As the Supreme Court recognized in *Wilson v. Parker, Covert &*

³ We note that Jaguar's position has evolved over the course of this litigation. In opposing the anti-SLAPP motions below, Jaguar relied on the fraud/perjury exception to the interim adverse judgment rule. On appeal, as set forth in the Discussion, Jaguar argues the interim adverse judgment rule does not apply because the underlying action was brought in bad faith.

Chidester (2002) 28 Cal.4th 811, 824, ‘Denial of a defense summary judgment motion on grounds that a triable issue exists, or of a nonsuit, while falling short of a determination of the merits, establishes that the plaintiff has substantiated, or can substantiate, the elements of his or her cause of action with evidence that, if believed, would justify a favorable verdict.’ [Citation.][⁴]

“In *Yee v. Cheung* (2013) 220 Cal.App.4th 184, the Court of Appeal applied the interim adverse judgment rule to a motion for nonsuit, holding that denial of nonsuit supports probable cause to bring the underlying action. As the court explained, ‘the trial court’s determination on the motion for nonsuit that there was sufficient evidence to allow the jury to decide the questions presented by the case means that a reasonable attorney could have concluded that the [underlying] action “was not totally and completely without merit.” ’ 220 Cal.App.4th at 200 (quoting *Sheldon Appel, supra*, 47 Cal.3d at 885).

“Jaguar contends that the interim adverse judgment rule is not applicable, because the motion for nonsuit in the Lemon Law action was not directed at all of Bagdasaryan’s case but was made only on his civil penalty claims. But a civil penalty claim under Civ. Code § 1794 requires the plaintiff to prove the elements of a statutory violation and an additional element with a higher standard of proof: that the defendant’s failure to comply was ‘willful.’ See § 1794(c); *Suman v. Superior Court* (1995) 39 Cal.App.4th 1309, 1315; CACI 3244 & 3201. Having

⁴ The Legislature partially abrogated *Wilson* to preclude the use of an anti-SLAPP ruling at any later stage of the proceedings or in a subsequent action. (§ 425.16, subd. (b)(3); *Hutton v. Hafif* (2007) 150 Cal.App.4th 527, 547–548.)

permitted Bagdasaryan's claim of willfulness to go to the jury, the trial court necessarily found that the remaining claims governed by a lesser standard were supported by sufficient evidence.

"Jaguar also contends that the interim adverse judgment rule is not applicable because the nonsuit ruling in the Lemon Law action was the product of false and fraudulent evidence. This is difficult to establish, because 'Although the fraud exception to the interim adverse judgment rule has been a feature of California law for more than a century, few courts have had occasion to apply it.' *Plumley v. Mockett* (2008) 164 Cal.App.4th 1031, 1053 (citations omitted). To establish this exception, Jaguar must show that the Defendants presented materially false evidence in the Lemon Law action and that Jaguar's motion for nonsuit might have been granted 'but for' the false evidence. *Antounian, supra*, 189 Cal.App.4th at 451; *Roberts, supra*, 76 Cal.App.4th at 384. Furthermore, Jaguar must present evidence of 'knowing use of false and perjured testimony.' *Antounian, supra*, 189 Cal.App.4th at 452.

"Jaguar's evidence does not meet this standard. Jaguar has not presented evidence that the trial court in the Lemon Law action found any of the Defendants to have engaged in fraud, perjury or other misconduct. There is no indication that the trial court sanctioned the Defendants or questioned or disparaged their witnesses and evidence. Quite the opposite — the court actually complimented both sides by stating: 'I think you've both done a great job. And it appears to me that this case is probably, to both sides, not just the typical lemon law case. There's issues involved that both sides feel strongly about. There is nothing wrong with that.'

“Jaguar has not presented any direct evidence of perjury or other misconduct, but has instead argued that this should be inferred from the relationship of the parties and the nature of the evidence presented in the Lemon Law action. The evidence does not support this inference. As in the case of a motion for summary judgment, Jaguar is only entitled to inferences that are reasonable and sufficient. [Citations.] The evidence in the Lemon Law action was sharply divided and each side was supported by conflicting expert witnesses. Jaguar has pointed to discrepancies and inconsistencies in the testimony, but the differences are routine. And it is significant that the trial judge in the Lemon Law action ruled on the motion for nonsuit after hearing Jaguar’s opposing evidence.

“Jaguar has presented an expert declaration by Patrick Dahlberg, who states his opinion that the vehicle defects in the Lemon Law action were the product of tampering. Bagdasaryan and Kasparian have both denied this assertion, based on their own knowledge and the findings of their expert in the Lemon Law action. Bagdasaryan’s attorneys — including Martin Anderson, who is not named as a defendant — have clearly stated that they believe there was probable cause to file and maintain the Lemon Law action. Under all the circumstances, Jaguar has not met its burden to show that the nonsuit ruling in the Lemon Law case was the product of false and fraudulent evidence and it has not met its burden to establish lack of probable cause.”

With respect to attorney fees and costs, the trial court awarded Kasparian and Center \$4,027.50, as requested, and noted that Bagdasaryan had reserved his right to seek attorney fees and costs by a subsequent motion.

Jaguar filed a timely notice of appeal from the orders granting the anti-SLAPP motions. Kasparian and Center filed a timely notice of cross-appeal, seeking review of their attorney fee award.

CONTENTIONS

Jaguar contends: denial of its nonsuit motion on the question of whether Jaguar had reason to believe that the vehicle was tampered with does not establish that the vehicle was not tampered with, or that Bagdasaryan and Kasparian had reason to believe that it had not been tampered with; even if the denial of Jaguar's nonsuit motion suggested that the underlying lemon law action was supported by probable cause, that suggestion was negated by the verdict in Jaguar's favor; Jaguar demonstrated that its malicious prosecution claim against each defendant had more than the requisite minimal merit; and Jaguar should be awarded its attorney fees because the anti-SLAPP motions were frivolous.

On cross-appeal, Kasparian and Center contend the \$4,027.50 attorney fee award was inadequate.

DISCUSSION

1. General principles.

"The anti-SLAPP statute does not insulate defendants from any liability for claims arising from the protected rights of petition or speech. It only provides a procedure for weeding out, at an early stage, *meritless* claims arising from protected activity. Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. [Citation.] If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a

probability of success. [The Supreme Court has] described this second step as a ‘summary-judgment-like procedure.’ [Citation.] The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff’s evidence as true, and evaluates the defendant’s showing only to determine if it defeats the plaintiff’s claim as a matter of law. [Citation.] ‘[C]laims with the requisite minimal merit may proceed.’ [Citation.]” (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384–385, fn. omitted.)

Our review of the trial court’s order granting the special motion to strike is de novo. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3 (*Soukup*).)

2. *Bagdasaryan, Kasparian, and Center met their burden with respect to the first step of the anti-SLAPP analysis.*

There is no question that the malicious prosecution action against Bagdasaryan and his counsel arose from their protected petitioning activity in bringing the underlying lawsuit against Jaguar. (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 734–735 (*Jarrow*) [malicious prosecution action necessarily arises from protected petitioning activity in filing the underlying lawsuit].)

Therefore, the issues before us relate to the second step of the analysis, namely, whether Jaguar met its burden to establish a likelihood of prevailing on its malicious prosecution claim. (§ 425.16, subd. (b)(1).)

3. *Jaguar failed to meet its burden to show a reasonable probability of success on its malicious prosecution claim; the denial of Jaguar’s motion for nonsuit in the underlying action establishes that Bagdasaryan and his counsel had probable cause to bring that action.*

a. *Elements of the tort of malicious prosecution.*

As this court noted in *Downey Venture v. LMI Ins. Co.* (1998) 66 Cal.App.4th 478, 493, “ ‘Malicious prosecution is a disfavored action. [Citations.] This is due to the principles that favor open access to the courts for the redress of grievances.’ ” Therefore, “the elements of the tort have historically been carefully circumscribed so that litigants with potentially valid claims will not be deterred from bringing their claims to court by the prospect of a subsequent malicious prosecution claim.” (*Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 872 (*Sheldon Appel*).)

To establish “ ‘a cause of action for the malicious prosecution of a civil proceeding, a plaintiff must plead and prove that the prior action (1) was commenced by or at the direction of the defendant and was pursued to a legal termination in his, plaintiff’s, favor [citations]; (2) was brought without probable cause [citations]; and (3) was initiated with malice [citations].’ ” (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 676.)

b. *The interim adverse judgment rule; denial of nonsuit establishes the underlying lawsuit was legally tenable.*

“Under established law, certain nonfinal rulings on the merits may serve as the basis for concluding that there was probable cause for prosecuting the underlying case on which a subsequent malicious prosecution action is based. (*Wilson [v. Parker, Covert & Chidester* (2002)] 28 Cal.4th [811,] 817–818

[(*Wilson*)].” (*Paiva v. Nichols* (2008) 168 Cal.App.4th 1007, 1020; accord, *Parrish v. Latham & Watkins* (Aug. 10, 2017, S228277) __ Cal.5th __ [pp. 8–9] (*Parrish*).) This principle, known as the interim adverse judgment rule (*Plumley v. Mockett* (2008) 164 Cal.App.4th 1031, 1053), is based upon the premise that “[c]laims that have succeeded at a hearing on the merits, even if that result is subsequently reversed by the trial or appellate court, are not so lacking in potential merit that a reasonable attorney or litigant would necessarily have recognized their frivolousness.” (*Wilson, supra*, 28 Cal.4th at p. 818; accord, *Parrish, supra*, __ Cal.5th __ [pp. 8–9].)

Wilson explained: “Denial of a defense summary judgment motion on grounds that a triable issue exists, *or of a nonsuit*, while falling short of a determination of the merits, establishes that the plaintiff has substantiated, or can substantiate, the elements of his or her cause of action with evidence that, if believed, would justify a favorable verdict. . . . [A] claimant or attorney who is in possession of such evidence has the right to bring the claim, even where it is very doubtful the claim will ultimately prevail.” (*Wilson, supra*, 28 Cal.4th at p. 824, italics added.)

Certain exceptions apply to the operation of the interim adverse judgment rule. “Denial of a summary judgment motion on procedural or technical grounds, rather than for existence of triable issues of material fact, says nothing regarding the potential merit of the action and hence does not establish probable cause for its initiation.” (*Wilson, supra*, 28 Cal.4th at p. 823, accord, *Parrish, supra*, __ Cal.5th __ [p. 10].) Further, if the interim ruling was obtained by fraud or perjury, the ruling

does not establish probable cause. (*Wilson, supra*, at pp. 817, 820; accord, *Parrish, supra*, __ Cal.5th __ [p. 8].)

c. Jaguar's attempts to avoid the interim adverse judgment rule are unpersuasive.

Under the general rule, the denial of Jaguar's nonsuit motion in the underlying action establishes that action was legally tenable, so as to render Jaguar incapable of showing that Bagdasaryan and his counsel lacked probable cause to bring the underlying action. Nonetheless, Jaguar presents various arguments as to why the interim adverse judgment rule does not apply. We address them below.

(1) *No merit to Jaguar's assertion the nonsuit motion was not on the merits.*

Jaguar's initial argument in this regard is that the interim adverse judgment rule does not apply because the nonsuit motion was not directed at the merits of the action. Jaguar asserts the nonsuit motion was not directed at the merits of Bagdasaryan's action because it was "not directed to whether the Land Rover had been tampered with," but solely to whether Jaguar's "belief that it had been tampered with was 'reasonable and in good faith.'" Jaguar's argument is meritless. The record reflects that the nonsuit motion in the underlying action went to the merits of the lawsuit.

Jaguar moved for nonsuit after Bagdasaryan presented his case, arguing that it could not be held liable for a civil penalty under the Act because there was insufficient evidence that the decision by Dahlberg "either not to repair the ABS light or not to repurchase the vehicle was in bad faith. I think the evidence is clear from all his testimony, in good faith, based upon the email that Mr. Guzelian forwarded to him, the photographs of the

greasy fingerprints, the environmental seal, the wires crossed, all of that combined together gave him a reasonable and good faith belief as a matter of law that the car had been tampered with, and therefore, there was no bad faith.”

The nonsuit motion, which challenged the sufficiency of Bagdasaryan’s evidence and contended that Bagdasaryan had not shown a willful violation of the Act, most certainly was directed at the merits of the action.

Jaguar’s reliance on *Franklin Mint Co. v. Manatt, Phelps & Phillips, LLP* (2010) 184 Cal.App.4th 313 (*Franklin Mint*) is misplaced. Jaguar relies on *Franklin Mint* for the proposition that an interim ruling that does not address the merits of an action does not establish probable cause. However, due to the procedural posture of the interim ruling therein, *Franklin Mint* is clearly distinguishable. There, the district court’s denial of a motion to dismiss in the underlying action merely meant that it found the complaint was sufficient to state a claim; the district court’s ruling only went to the sufficiency of the pleadings and “sa[id] nothing about whether [the] legal theory . . . was tenable.” (*Id.* at pp. 346–347, fn. 19.) Here, in contrast, Jaguar’s motion for nonsuit occurred *after* Bagdasaryan presented his case at trial, at which time Judge Brenner determined that Bagdasaryan had made a sufficient prima facie case to withstand nonsuit. Judge Brenner’s ruling clearly was on the merits of the action.

(2) *The denial of Jaguar’s nonsuit motion on the claim for civil penalties for a willful violation of the Act necessarily included a finding that Bagdasaryan had made a prima facie showing that Jaguar had violated the Act.*

Jaguar contends the interim adverse judgment rule is not applicable because the nonsuit motion was directed only to

Bagdasaryan's civil penalty claims, not to Bagdasaryan's entire action. We reject Jaguar's attempt to limit the impact of Judge Brenner's nonsuit ruling.

Civil Code section 1794 states in relevant part: "(a) Any buyer of consumer goods who is damaged by a failure to comply with any obligation under this chapter or under an implied or express warranty or service contract may bring an action for the recovery of damages and other legal and equitable relief. [¶] . . . [¶] (c) *If the buyer establishes that the failure to comply was willful*, the judgment may include, in addition to the amounts recovered under subdivision (a), a civil penalty which shall not exceed two times the amount of actual damages." (Italics added.)

In denying nonsuit with respect to civil penalties, Judge Brenner necessarily determined that Bagdasaryan had made a prima facie showing that Jaguar had *willfully* failed to comply with its statutory obligations. Inherent in Judge Brenner's ruling that Bagdasaryan had shown prima facie evidence of a *willful noncompliance* by Jaguar was that Bagdasaryan had shown *noncompliance* by Jaguar. Stated another way, Judge Brenner's denial of nonsuit with respect to Bagdasaryan's claim for civil penalties was also a determination that Bagdasaryan had made a prima facie showing that Jaguar had violated the Act.

Because civil penalties for a willful violation require a plaintiff to first establish that a violation occurred, we agree with Judge Johnson that the denial of nonsuit with respect to civil penalties necessarily included a ruling on the merits of Bagdasaryan's underlying claims.⁵

⁵ Jaguar also argues that Judge Johnson erred insofar as he reasoned that willfulness penalties under the Act require a

(3) *No merit to Jaguar's reliance on bad faith exception to interim adverse judgment rule.*

Next, Jaguar argues the interim adverse judgment rule does not apply if the underlying action was brought in bad faith, and here, the jury verdict in the underlying action establishes that the action was prosecuted in bad faith, with no basis in law or fact.⁶ In support, Jaguar relies on *Slaney v. Ranger Ins. Co.* (2004) 115 Cal.App.4th 306 (*Slaney*).

In *Slaney*, an insurance company denied a claim by its insureds for damage to their aircraft in an accident. The aircraft's prior owner prepared an estimate for repair to the plane, which the insureds submitted with their claim. The insurer denied the claim and asserted the insureds and the prior owner had conspired to defraud the insurer by presenting an inflated claim. The insureds sued their insurer for bad faith, and the insurer cross-complained against the insureds and the prior owner for fraudulent conspiracy. (*Slaney, supra*, 115 Cal.App.4th at pp. 309–310.) The prior owner moved for summary judgment

higher standard of proof, and in his rationale that because Judge Brenner allowed Bagdasaryan's claim of willfulness to go to the jury, Judge Brenner necessarily found that the remaining claims governed by a lesser standard were supported by sufficient evidence. We are not concerned with that reason given by Judge Johnson because our ruling is de novo. (*Soukup, supra*, 39 Cal.4th at p. 269, fn. 3.)

⁶ For evidentiary support, Jaguar's contention that the underlying action was prosecuted in bad faith relies on the defense verdict in the underlying action, and on the inferences that should be drawn from the verdict. Jaguar does not cite to declarations or other evidence to support this argument.

on the cross-complaint; the trial court denied the motion. (*Id.* at p. 311.) However, the prior owner subsequently renewed the summary judgment motion before a different trial judge, who granted the motion. (*Id.* at p. 312.) Thereafter, in the litigation between the insurer and the insureds, the insureds prevailed on their claim for bad faith, and the jury concluded the insurer's denial of the claim—based in part on the insurer's assertion of a fraudulent conspiracy by the insureds and the prior owner—was malicious. (*Slaney, supra*, 115 Cal.App.4th at pp. 309, 313.) The prior owner then brought a malicious prosecution action against the insurer. (*Id.* at pp. 313–314.) The insurer filed an anti-SLAPP motion, arguing the denial of the prior owner's original motion for summary judgment motion established, as a matter of law, that the cross-complaint was prosecuted with probable cause. (*Id.* at p. 315.) The trial court denied the motion and *Slaney* affirmed. (*Id.* at pp. 309–310.)

The *Slaney* court concluded the interim adverse judgment rule did not apply under the circumstances of the case. (*Slaney, supra*, 115 Cal.App.4th at pp. 319–321.) *Slaney* recognized that the denial of summary judgment is normally sufficient to establish probable cause to defeat a later malicious prosecution suit (*id.* at p. 319), and found that the prior owner's eventual success on the renewed summary judgment motion did not negate that conclusion. (*Id.* at p. 320.) However, *Slaney* reasoned the fact that the jury ultimately found the insurer denied the claim “in bad faith and with malice,” together with the eventual grant of summary judgment in favor of the prior owner, was sufficient to offset the denial of the original motion for summary judgment and support inferences of lack of probable cause and malice. (*Id.* at pp. 320–321.) *Slaney* explained it was

“reasonable to infer” from the malice finding and the jury’s award of punitive damages to the insureds that the jury “concluded [the insurer’s] theory of conspiracy to defraud between [the prior owner and the insureds] was itself fraudulent and prosecuted in bad faith.” (*Id.* at p. 321.) “This,” *Slaney* held, “along with the ultimate grant of summary judgment in favor of [the prior owner] [was] sufficient to offset the first denial of the motion for summary judgment and support inferences of lack of probable cause and malice.” (*Ibid.*)

Slaney is plainly distinguishable. Here, there was no finding in the underlying action that Bagdasaryan’s lawsuit against Jaguar was brought in bad faith and with malice. As indicated, Bagdasaryan’s lawsuit against Jaguar was resolved by a defense verdict which made no such findings.

Nonetheless, Jaguar argues the “necessarily-implied findings of the jury in [this] action are no different from the jury’s express findings in *Slaney*.” Jaguar asserts that because its entire defense to Bagdasaryan’s lawsuit was that the problems with his vehicle were caused by his tampering, the defense verdict necessarily reflects that the jury found Bagdasaryan *knew* he lacked a factual basis to sue Jaguar on a theory that the damage was due to a manufacturing defect.

Leaving aside whether *Slaney* can be reconciled with *Wilson*’s articulation of the interim adverse judgment rule (*Wilson, supra*, 28 Cal.4th at p. 817 [an interim ruling in favor of the plaintiff in the underlying case, unless obtained by means of fraud or perjury, establishes probable cause to bring the underlying action]), we decline to extend *Slaney* to the instant case. Here, the defense verdict on its face reflects nothing more than that the jury found Bagdasaryan failed to prove his claims

against Jaguar by a preponderance of the evidence, or that the jury implicitly found Bagdasaryan was less credible than Jaguar. (CACI No. 200.) However, a finding that a party lacks credibility does not equate with a finding that the party engaged in fraud or perjury. Further, *Slaney* itself recognizes, “ ‘every case litigated to a conclusion has a losing party, but that does not mean the losing position was not arguably meritorious when it was pled.’ ” (*Slaney, supra*, 115 Cal.App.4th at p. 320, quoting *Jarrow, supra*, 31 Cal.4th at p. 743.)

Moreover, *Parrish* makes it clear that “[r]eliance on a verdict to raise doubts about probable cause threatens to impinge” on the principle that litigants have the right to bring a claim they think unlikely to succeed, so long as the claim is arguably meritorious. (*Parrish, supra*, __ Cal.5th __ [pp. 15–16].) Therefore, we cannot go behind the defense verdict to speculate as to the considerations that motivated the jury to arrive at its decision. Such an approach would eviscerate the interim adverse judgment rule; in every case, a losing party could be accused of knowing it lacked a factual basis for bringing suit.

For these reasons, *Slaney* cannot be extended to this fact situation, in which the underlying action was resolved by way of a defense verdict that did not set forth the basis of the jury’s decision.

In sum, pursuant to the interim adverse judgment rule, the denial of Jaguar’s motion for nonsuit in the underlying action established that Bagdasaryan’s action was supported by probable cause. Accordingly, Jaguar is incapable of establishing a reasonable probability of prevailing on its malicious prosecution claim against Bagdasaryan, Kasparian and Center, making the grant of their anti-SLAPP motions proper.

4. *Attorney fee issues.*

a. *Jaguar's request for attorney fees.*

Jaguar's final contention is that it should be awarded attorney fees because the anti-SLAPP motions were frivolous. Our decision affirming the grant of the anti-SLAPP motions resolves this contention.

b. *The cross-appeal by Kasparian and Center.*

On cross-appeal, Kasparian and Center contend they received an inadequate award of attorney fees, and they seek a remand so that the trial court can enhance the award.

By way of background, Kasparian and Center's moving papers on their anti-SLAPP motion requested attorney fees and costs totaling \$4,027.50. The declaration of their attorney, Steven Yee, stated "I anticipate spending in excess of nine (9) hours drafting the reply to plaintiff's opposition to my clients' special motion to strike (SLAPP suit) and motion for attorneys' fees and preparing for, traveling to and from, and attending the hearing on my clients' motions." After taking the matter under submission, by minute order entered on September 26, 2014, the trial court granted the special motions to strike and awarded Kasparian and Center \$4,027.50, as requested.

The following month, on October 20, 2014, Attorney Yee filed a declaration along with a proposed order on the anti-SLAPP motion. The declaration included the following statement: "Due to the unexpectedly large volume of documents plaintiff included in its opposition to anti-SLAPP motion, my clients' requested attorneys' fees in their anti-SLAPP motion did not cover all of the fees and costs that my clients incurred in connection with their anti-SLAPP motion. My clients will thus seek additional attorneys' fees that this Court deems proper."

The proposed order accompanying Yee's declaration stated that Jaguar was to pay \$4,027.50 to Kasparian and Center for their attorneys' fees and costs "in addition to any attorneys' fees and costs awarded [them] pursuant to their supplemental motion for attorneys' fees." However, no supplemental motion was filed. On November 17, 2014, the trial court signed the order granting Kasparian and Center's anti-SLAPP motion, but deleting the language pertaining to a supplemental award of attorney fees.

On cross-appeal, Kasparian and Center contend they reasonably anticipated that they would incur only nine additional hours in replying to Jaguar's opposition and attending the hearing, but Jaguar's opposition included *740 pages* of documents, which required an additional eight hours for review. In addition, more attorney time was consumed in preparing evidentiary objections to Jaguar's improper declarations and in preparing for the hearing. Therefore, the matter should be remanded to the trial court for an additional award of attorney fees.

Absent from this argument is any showing that the trial court erred in its handling of the request for attorney fees. All that has been shown is that the movants made a mistaken assumption about the amount of attorney time it would take to address Jaguar's opposition. However, at the time of the hearing on the anti-SLAPP motions on September 23, 2014, Kasparian and Center knew how much attorney time had been incurred in replying to Jaguar's opposition papers. They submitted on the matter without seeking any additional fees at that time. On September 26, 2014, the trial court awarded Kasparian and Center the precise amount that they requested. The trial court

properly declined their request one month later to reopen the issue of attorney fees. There was no error.

DISPOSITION

The orders granting the special motions to strike brought by Bagdasaryan, Kasparian and Center, and awarding Kasparian and Center \$4,027.50 in attorney fees and costs, are affirmed. Bagdasaryan, Kasparian and Center shall recover their costs on appeal, including reasonable attorney fees they incurred in responding to Jaguar's appeal. (*Lucky United Properties Investment, Inc. v. Lee* (2010) 185 Cal.App.4th 125, 139.) Kasparian and Center shall bear their own costs on their cross-appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

LAVIN, J.

BACHNER, J.*

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