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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

PATRICIA BERRY et al., Plaintiffs, Cross-defendants and Appellants, v. RIVERGATE OF SANTA MARIA, LLC, Defendant, Cross-complainant and Respondent.	2d Civil No. B285619 (Super. Ct. No. 16CV04923) (Santa Barbara County)

Respondent Rivergate of Santa Maria, LLC (Rivergate) notified visitors at its Santa Maria Pines Campground that the park was sold and slated for closure. The resident manager and two park visitors, appellants here, sued Rivergate. They alleged that Rivergate's notice violated unlawful detainer procedure, the Consumer Legal Remedies Act and the Recreational Vehicle Park Occupancy Law (RVPOL).

Rivergate cross-complained against appellants, who moved to strike the cross-complaint as a Strategic Lawsuit Against Public Participation (SLAPP). (Code Civ. Proc., § 425.16.)[1] The trial court granted the motion in part.

We conclude that the anti-SLAPP law does not apply to the causes of action at issue here, which are compulsory cross-claims related to the subject matter being litigated in the complaint. (§ 426.30.) Rivergate's claims arose from appellants' prelitigation conduct. The claims had to be asserted by cross-complaint or be forfeited. We affirm.

FACTS

Appellant Sharon Dugan was resident manager at Rivergate. Rivergate paid Dugan a weekly salary and provided her with an apartment at the park. Among her duties, Dugan was required to make reservations, have visitors sign registration agreements, collect payment, and enforce park rules. Dugan was given park rules to hand to visitors and a copy of the RVPOL. The park rules are also posted on park property and available online. Dugan denies that Rivergate gave her a document called "park rules."

Appellants Patricia and Dana Berry occupied a space at Rivergate, where customers were charged daily or weekly rates. Dugan denies being told that visitors could not stay more than 30 consecutive days; she declares that Rivergate management was aware that some customers had extended stays. The Berrys, for example, stayed at Rivergate since March 2016.

The first week of October 2016, Rivergate notified Dugan that the property was sold and instructed her not to take

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[1] Unlabeled statutory references are to the Code of Civil Procedure.

bookings past November 10. At the time, no pending reservations existed past October 31. Rivergate gave Dugan a 30-day written notice to serve on park occupants. The notice states that the park was sold, was slated for demolition, and sites had to be vacated by November 10. Dugan did not serve the notice on the Berrys until October 21. The initial notice was followed by a "10-Day Notice to Vacate" on October 29, reiterating that the park was closing and warning that any vehicles or personal property left after November 10 would be removed.

The Berrys signed a two-week registration agreement on October 13, 2016. When the agreement expired on October 27, the Berrys did not vacate Rivergate. They were given a 72-hour notice to quit and pay rent on November 15. They remained at Rivergate, and were notified that their vehicle would be towed on November 27.

Dugan did not collect rent from the Berrys after their registration agreement expired. Dugan threatened to subvert Rivergate's close of escrow by refusing to leave the premises.

Appellants sued Rivergate. Their amended pleading alleges that Rivergate violated California law relating to evictions and RV parks. They assert that Rivergate failed to provide park rules and regulations or give proper notice about the removal of recreational vehicles. Appellants acknowledge receiving notice in October that the park was closing, but assert that the notice was invalid.

Rivergate cross-complained. Its first cause of action is a breach of contract/breach of fiduciary duty claim against Dugan. The pleading alleges that Dugan had duties to perform as Rivergate's employee, which included giving visitors the park rules, collecting rent, and serving notices. On or before October

10, 2016, Dugan was instructed to serve written notice on park occupants, giving them 30 days to vacate; she was told not to take any reservations extending after November 10. Dugan breached her employment contract by failing to post and serve the notices to vacate; by allowing occupants to remain on the premises after November 10; and by failing to collect rent.

The second cause of action in Rivergate's cross-complaint seeks equitable indemnity against Dugan. It re-alleges the claims from the first cause of action, and further alleges that Dugan contravened Rivergate's instructions, allowing the Berrys and others to remain at Rivergate without paying rent. Any claims made by the Berrys arise from Dugan's lapses.[2]

The third cause of action, against the Berrys, asserts a trespass. This claim alleges that the Berrys signed a registration agreement covering October 13-27, 2016. The Berrys failed to vacate Rivergate at the end of their rental period and became holdovers who refused to pay rent. They did not remove their RV from Rivergate until November 27. Rivergate seeks unpaid rent from the Berrys.

Appellants moved to strike the entire cross-complaint as a SLAPP, on the ground that each cause of action arises from the right to petition and is barred by the litigation privilege. They contended that the cross-complaint "references the complaint" and was filed "to intimidate these folks into giving up on their complaint."

In opposition, Rivergate argued that Dugan, as resident manager, failed to obey its instructions to give visitors park rules and serve notices. The cross-complaint aims to impose liability

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[2] In its brief, Rivergate states that it has abandoned its second cause of action; therefore, we do not discuss it further.

on Dugan for breaches of her employment agreement, which affected occupants like the Berrys and damaged Rivergate. Further, the cross-complaint seeks unpaid rent from the Berrys, who did not vacate Rivergate when their registration agreement expired. Rivergate contends that these are compulsory cross-claims against appellants.

The trial court partially granted appellants' motion to strike. It deemed the first (breach of contract) and second (indemnity) causes of action to be "mixed," with allegations of both protected and unprotected activity; it denied the motion as to the third cause of action (trespass); and it granted the motion as to the fourth, fifth and sixth causes of action.[3]

DISCUSSION

1. Appeal and Review

Appeal may be taken from an order granting or denying a special motion to strike. (§ 425.16, subd. (i).) Appeal lies if the trial court denies the motion as to some causes of action, or if the claims mix protected and unprotected activity. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 381-382, 394; *Old Republic Construction Program Group v. The Boccardo Law Firm, Inc.* (2014) 230 Cal.App.4th 859, 866, fn. 4 [motion granted on one of six causes of action].) The trial court's ruling is reviewed de novo. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 820.)

2. Compulsory Cross-Complaint Claims Are Not Subject to a Special Motion to Strike

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[3] This appeal does not concern the fourth, fifth or sixth causes of action, asserting interference with prospective economic advantage, abuse of process and slander of title. The trial court ruled against Rivergate on these claims, and Rivergate did not appeal from the adverse ruling.

A cross-complaint may be subject to an anti-SLAPP motion. (§ 425.16, subd. (h).) However, a cross-complaint is not a SLAPP merely because it was filed in response to a complaint. Indeed, under the compulsory cross-claim rule, a defendant *must* raise by cross-complaint claims against plaintiff that are related to the complaint; the defendant is barred by res judicata and collateral estoppel from raising in a later lawsuit claims or issues that could have been litigated by counterclaim. The rule avoids piecemeal litigation and conflicting judgments. (§ 426.30, subd. (a); *Clark v. Lesher* (1956) 46 Cal.2d 874, 881-882; *Chao Fu, Inc. v. Chen* (2012) 206 Cal.App.4th 48, 55-56.)

A compulsory cross-complaint related to the claims asserted in the complaint is "rarely, if ever," subject to an anti-SLAPP motion. (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 651, disapproved on other grounds in *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5.) A related cause of action is one that "arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause of action [that] plaintiff alleges in his complaint." (§ 426.10, subd. (c).) A "logical relationship" between the claims made in the complaint and the defendant's counterclaims is required, not an absolute identity of facts. (*Currie Medical Specialties, Inc. v. Bowen* (1982) 136 Cal.App.3d 774, 777.)

For example, if a plaintiff files a breach of contract lawsuit arising from a construction project, the defendant may file a cross-complaint alleging 20 causes of action relating to the poor work performance of the plaintiff, the plaintiff's fraudulent bidding, billing and work processes, and so on. The cross-claims survived an anti-SLAPP motion because they were based on plaintiff's pre-litigation conduct. (*Kajima Engineering &*

Construction, Inc. v. City of Los Angeles (2002) 95 Cal.App.4th 921, 925-932 (*Kajima*).)

By contrast, a suit may be dismissed as a SLAPP if it "'is not "related" to the transaction or occurrence which is the subject of the plaintiff's complaint, but arises out of the litigation process itself' [Citation]." (*Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1373-1374 [a cross-complaint asserting malicious prosecution, abuse of process and other claims arose solely from plaintiff's protected activity of filing its complaint].)

3. The Challenged Causes of Action in the Cross-Complaint Relate to the Occurrences that Are the Subject of the Complaint

The subject of appellants' complaint is Rivergate's alleged violations of the RVPOL. These violations arose from Rivergate's alleged failure to (1) provide its visitors with park rules and (2) give visitors adequate notice that their occupancy was to be terminated.

Rivergate's cross-complaint states that the company *did* provide park rules and *did* provide appellants with more than 30 days notice to vacate. The sole reason that park visitors did not receive the rules or the notice to vacate was because the resident manager, appellant Dugan, breached her employment contract by failing to distribute park rules or the notice to vacate, as she was instructed. She also failed in her duty to collect rent from her co-plaintiffs, the Berrys, and allowed them to remain in their space after their registration agreement expired. Rivergate was damaged by Dugan's conduct.

Rivergate's claims against Dugan are directly related to the occurrences that are the subject of the complaint. Rivergate asserts that the Berrys' failure to receive park rules and notice of the park closure was caused by Dugan's pre-lawsuit misconduct.

As resident manager, Dugan was charged with distributing park rules and the notice to vacate; she failed to perform her duties, according to the cross-complaint. As described in the *Kajima* case, a defendant is entitled to attack a plaintiff's claims by asserting that the plaintiff's prelitigation misdeeds caused harm.

Rivergate's claims against Dugan are compulsory. They had to be asserted by cross-complaint to counter the allegations made in the complaint. The cross-complaint arises from Dugan's conduct in failing to carry out her employment duties, not from acts in furtherance of Dugan's right to petition or free speech.

Rivergate's claim against the Berrys relates to the same transaction that is the subject of the complaint, i.e., the Berrys' occupancy of an RV space at Rivergate. Rivergate's third cause of action asserts that the Berrys are holdovers or trespassers. Rivergate alleges that the Berrys were two-week occupants who agreed to vacate their space before the park closed permanently.[4] The third cause of action seeking unpaid rent arises from the Berrys' conduct in signing a two-week registration agreement and their refusal to honor the agreement and leave after two weeks. It does not arise from the Berrys' right to petition or free speech.

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[4] The RVPOL specifies different treatment for different types of visitors. An "occupant" is an RV owner who has been in the park for 30 days or less, and is entitled to 72 hours notice to vacate. (Civ. Code, §§ 799.28, 799.55.) A "tenant" who occupies a space for more than 30 consecutive days is entitled to 30 days' notice of nonrenewal or five days' notice if the tenant is in default on rent. (*Id*, §§ 799.32, 799.65, 799.66.) A "resident" who has been in the park nine months or more must receive 60 days' notice of termination or nonrenewal. (*Id*, §§ 799.31, 799.70.) In their brief, the Berrys claim that they were "tenants."

In sum, the gravamen of the cross-complaint is appellants' pre-litigation conduct. Rivergate's claims against appellants had to be raised in a cross-complaint or be forfeited under the compulsory cross-complaint rule. The cross-complaint is factually related to the occurrences described in the complaint. As appellants aptly write in their brief, the anti-SLAPP law "does not apply where the underlying claims arose from . . . acts occurring during the tenancy or with the termination of the tenancy, but not arising from the complaint." For that very reason, the anti-SLAPP law does not apply here.

We do not reach the issue of whether Rivergate is likely to prevail because the first and third causes of action in the cross-complaint are not subject to a motion to strike under section 425.16. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 80-81.)

DISPOSITION

The judgment is affirmed. Rivergate is entitled to recover its costs on appeal from appellants. Rivergate's request for sanctions for a frivolous appeal is denied.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Timothy J. Staffel, Judge

Superior Court County of Santa Barbara

Law Offices of Ron Bochner and Ron Bochner for Plaintiffs, Cross-defendants and Appellants.

Law Offices of Robert B. Locke and Robert B. Locke for Defendant, Cross-complainant and Respondent.