Filed 6/27/17 Boladian v. The Dobrusin Law Firm CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ARMEN BOLADIAN et al., Plaintiffs and Appellants, v. THE DOBRUSIN LAW FIRM et al., Defendants and Appellants.	B270472 [related pending appeals B269508, B268550, B267950] (Los Angeles County Super. Ct. No. BC576665)

APPEALS from orders of the Superior Court of Los Angeles County, Randolph M. Hammock and Michael J. Raphael, Judges. Affirmed.

King & Ballow and Paul H. Duvall for Plaintiffs and Appellants.

Kaufman Dolowich Voluck, Andrew J. Waxler and Scott K. Murch for Defendant and Appellant The Dobrusin Law Firm.

Klinedinst, Heather L. Rosing, Betsy S. Kimball, and Hartford O. Brown for Defendant and Appellant Jeffrey P. Thennisch.

Plaintiffs and appellants Armen Boladian (Boladian), Bridgeport Music, Inc. (Bridgeport), and Westbound Records, Inc. (Westbound) (sometimes collectively referred to as Boladian) appeal an order granting special motions to strike their malicious prosecution complaint. (Code Civ. Proc., § 425.16.) The moving defendants, the respondents herein, are Jeffrey P. Thennisch (Thennisch) and The Dobrusin Law Firm, P.C., formerly known as Dobrusin & Thennisch (hereafter, Dobrusin or the Dobrusin firm) (collectively, the attorney defendants).[1] The Boladian plaintiffs also appeal a subsequent order awarding attorney fees to Thennisch and Dobrusin pursuant to section 425.16.

Thennisch and Dobrusin also have appealed the attorney fee order, challenging the amount of fees they were awarded as inadequate.

We conclude the trial court erred in ruling that the malicious prosecution action was time-barred and in granting the anti-SLAPP motions on that basis; Boladian's lawsuit was timely filed. However, we also conclude the trial court's error was harmless because the attorney defendants were entitled to a grant of their special motions to strike on other grounds: Thennisch and Dobrusin are out of state attorneys who were never attorneys of record or admitted pro hac vice, and the Boladian plaintiffs failed to meet their burden to make a prima

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[1] The order granting the 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.

facie showing that Thennisch and Dobrusin initiated, prosecuted, or directed the underlying action.

We also affirm the subsequent order awarding attorney fees to Thennisch and Dobrusin.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The underlying action.*

On December 5, 2011, musician George Clinton filed suit in the United States District Court for the Central District of California against Westbound and its owner, Boladian, among others. Clinton was represented in that action by Attorney Larry H. Clough, and the last page of Clinton's complaint also listed Thennisch as well as Dobrusin, a Michigan law firm, as counsel to Clinton, with the notation "Pro Hac Vice Application to be filed."

The complaint, which contained numerous causes of action, including copyright infringement and declaratory relief, alleged as follows: Clinton is the original creator of, and has rights, title and interest in, the Funkadelic sound recordings released by Westbound (the Westbound Sound Recordings). In 1969, in an oral agreement, Clinton granted Westbound rights to said recordings in exchange for Westbound's duty to account and pay 50 percent of monies collected for the sale and commercial exploitation of those recordings. However, defendants "have unlawfully utilized the [recordings] without the permission of [Clinton] and without accounting or paying royalties to [Clinton]." Among other things, Clinton requested a judicial declaration that he, and not Boladian, was the owner of all rights relating to the copyright interests and sound recordings comprising the Westbound Sound Recordings.

The complaint also alleged Clinton's ownership of the copyrights to the musical works and sound recordings known as the Warner Brothers Sound Recordings, consisting of recordings originally released by Warner Brothers on the albums "Uncle Jam Wants You," "One Nation Under a Groove," "Hardcore Jollies," and "Electric Spanking of War Babies."

On January 4, 2013, Daniel A. Rozansky of Stroock & Stroock & Lavan (Stroock) substituted into the case in place of Clough, who had been ill. On January 7, 2013, the matter was before Judge Manuel L. Real on an order to show cause why the action should not be dismissed for lack of prosecution. Judge Real ordered the action dismissed without prejudice, with 30 days leave to file an amended complaint.

On February 6, 2013, Clinton, through the Stroock firm, filed a first amended complaint, which added Bridgeport as a defendant and reduced the pleading to two causes of action: copyright infringement (17 U.S.C. § 501), and declaratory relief.

On April 1, 2013, Judge Real granted a defense motion to dismiss for failure to state a claim and lack of personal jurisdiction. The April 1, 2013 order stated: "The Court will issue a proposed order."

On May 2, 2013, Judge Real signed and entered an order dismissing the underlying action with prejudice. The court ruled, inter alia, it lacked personal jurisdiction over Bridgeport; Clinton failed to state a claim for copyright infringement, as the amended complaint was completely devoid of facts concerning any specific instances of infringement; the declaratory relief claim was duplicative of the copyright infringement claim and was

unnecessary; and Clinton was not entitled to further leave to amend.[2]

On May 31, 2013, Clinton filed a notice of appeal to the Ninth Circuit. On May 8, 2014, the Ninth Circuit dismissed Clinton's appeal for failure to file an opening brief.

2. *The instant action.*

a. *Boladian's complaint for malicious prosecution.*

On March 25, 2015, Boladian, Bridgeport, and Westbound filed suit against Clinton and his attorneys, namely, Clough, Thennisch, the Dobrusin firm, Rozansky, and Stroock. As against Thennisch and Dobrusin, the complaint pled a cause of action for malicious prosecution of the underlying action, and sought to hold the Dobrusin firm vicariously liable for Thennisch's involvement in the 2011 litigation. The complaint alleged in relevant part:

Clinton lacked probable cause to allege that he owned the Westbound Sound Recordings because in 1972 and 1975, Clinton entered into written agreements with Westbound recognizing Westbound's exclusive rights to those recordings. On information and belief, Thennisch "drafted the 2011 complaint knowing the allegations were false." Clinton's attorneys were repeatedly advised by Judge Real and by Paul Duvall, Boladian's counsel, that Clinton's claims were baseless. Thennisch "calculatedly joined Clough in filing the 2011 Litigation" with the purpose of

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[2] Boladian filed a motion for Rule 11 sanctions (Fed. Rules Civ. Proc., rule 11) against Clinton, Clough, and Rozansky, contending that Clinton and his counsel should be sanctioned because they pursued the action despite being advised that Clinton's claims were futile and frivolous. On May 6, 2013, Judge Real denied the motion.

harassing and harming Boladian. Thennisch also provided Clough with the declaration of Jane Peterer, a former Bridgeport employee, so as to get the declaration into the record, in order to humiliate and embarrass Boladian, and to enable Clinton to post the declaration on his website and to include it in his autobiography. The 2011 litigation and the subsequent appeal terminated in Boladian's favor.

b. *Thennisch's and Dobrusin's anti-SLAPP motions.*

Thennisch and Dobrusin filed special motions to strike Boladian's malicious prosecution claim. They contended the malicious prosecution claim arose out of protected activity so as to be subject to anti-SLAPP scrutiny, shifting the burden to Boladian to establish a likelihood of success on the merits. Further, they contended the Boladian plaintiffs could not satisfy their burden because, inter alia: the cause of action was barred by the one-year statute of limitations; neither Thennisch nor Dobrusin initiated or pursued the underlying action; Clinton's claims were supported by probable cause; and Boladian could not establish malice.

Thennisch's supporting declaration stated: prior to the filing of the original complaint in the underlying action, Clinton and his attorneys consulted with him regarding potential copyright claims against Boladian, Westbound and others; Thennisch did not have a retainer agreement with Clinton, and Clinton never paid him any attorney fees in connection with the 2011 litigation; Thennisch never traveled to California to consult with Clinton and his counsel; he never filed an application to appear pro hac vice in the 2011 litigation; he never appeared in court on Clinton's behalf in that action; in the 2011 litigation, he was never served with any pleadings or filings, and he neither

sent nor received any correspondence; he was not consulted regarding the filing of the first amended complaint; he did not sign or file the amended complaint and was not listed on its caption or signature page.

The declaration of Eric Dobrusin stated that Thennisch's association with the Dobrusin firm ended on January 31, 2013, and since Thennisch's departure, the firm had done no work for Clinton.

c. *Boladian's opposition to the anti-SLAPP motions.*

Boladian filed essentially the same declaration in opposition to the two anti-SLAPP motions. With respect to the role of Thennisch and Dobrusin in the underlying litigation, Boladian stated he "believe[d]" that Thennisch drafted Clinton's complaint in the underlying action. Boladian also noted that Thennisch and Dobrusin were listed on the original complaint as counsel to Clinton. Further, although a declaration of Jane Peterer, a former Bridgeport employee, had previously been ordered sealed by the district court in Michigan in an unrelated case, Thennisch gave a version of the Peterer declaration to Clough so that it could be filed in support of Clinton's motion for an extension of time, even though the declaration had nothing to do with that motion. Boladian also asserted that Clinton and his counsel, including Thennisch, knew that Clinton's claims were meritless; they knew, among other things, that Clinton had signed agreements with Westbound in 1972 and 1975, which made clear Westbound's ownership of the Westbound Sound Recordings, and that Clinton had received royalty statements over the years, contrary to Clinton's claim that Boladian had failed to account to him. Boladian also expressed his belief that Thennisch had arranged for Clinton to appear in a news

broadcast in February 2013 for the purpose of destroying Boladian's reputation.[3]

d. *Trial court's ruling granting the anti-SLAPP motions.*

In an order filed October 26, 2015, the trial court granted both anti-SLAPP motions on the sole ground that Boladian's malicious prosecution claim was time-barred. The trial court ruled the matter was governed by the one-year statute of limitations (§ 340.6, subd. (a)), which began to run on April 1, 2013, "immediately after the clerk entered the minute order granting the motion to dismiss," rather than on May 2, 2013, the date the formal order was entered. As a consequence, the malicious prosecution action filed March 25, 2015 was untimely, even after tolling the time that the matter was on appeal to the Ninth Circuit.[4]

e. *Attorney fees*.

Dobrusin and Thennisch subsequently filed motions for attorney fees pursuant to section 425.16. Dobrusin sought attorney fees in the amount of $83,406.50 and costs in the amount of $2,626.58. Thennisch requested fees and costs totaling $136,449.00.

After hearing the matter, the trial court awarded attorney fees in the sum of $68,859 each to Thennisch and Dobrusin. It

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[3] Below, Thennisch and Dobrusin filed extensive written evidentiary objections to Boladian's declaration, asserting, inter alia, that Boladian failed to show he had personal knowledge of the asserted facts.

[4] In its ruling, the trial court also overruled all evidentiary objections.

based the fee reduction on duplication of efforts, and further found that Thennisch unnecessarily staffed the motion with three attorneys. The trial court also awarded costs to Dobrusin and Thennisch in the amounts of $1,845.27 and $1,719.24, respectively.

f. *Appeals*.

The Boladian plaintiffs filed timely notices of appeal from the orders granting Thennisch's and Dobrusin's anti-SLAPP motions and the subsequent order awarding them attorney fees. Thennisch and Dobrusin filed timely notices of appeal from the attorney fees order.

CONTENTIONS

Boladian contends: the malicious prosecution complaint was timely filed; Thennisch and Dobrusin directed and participated in the underlying lawsuit; Boladian established that Thennisch and Dobrusin lacked probable cause to bring the original complaint in the 2011 litigation; that matter was favorably terminated on the merits; Thennisch acted with malice; and the award of attorney fees should be reversed.

Thennisch and Dobrusin contend the trial court abused its discretion in making an inadequate award of attorney fees.

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 motions to strike is de novo. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.)

2. *Thennisch and Dobrusin met their burden with respect to the first step of the anti-SLAPP analysis.*

There is no question that the malicious prosecution action against the attorney defendants arose from their protected activity in allegedly representing Clinton, who was the plaintiff in the underlying action against Boladian. (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 734-735 [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 the Boladian plaintiffs met their burden to establish a likelihood of prevailing on their malicious prosecution claim. (§ 425.16, subd. (b)(1).)

3. *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.)

4. *Boladian's complaint for malicious prosecution was timely filed; in accordance with the start/stop rule, Boladian filed suit less than one year after entry of judgment in the underlying action.*

Before addressing whether Boladian made a prima facie showing with respect to the elements of the tort of malicious prosecution, we address the threshold issue of whether, as the trial court found, Boladian's malicious prosecution action is time-barred.

In *Roger Cleveland Golf Co., Inc. v. Krane & Smith, APC* (2014) 225 Cal.App.4th 660 (*Roger Cleveland*), this court explained: "Pursuant to the 'start/stop' computation refined by

this court in *Rare Coin Galleries, Inc. v. A–Mark Coin Co., Inc.* (1988) 202 Cal.App.3d 330 (*Rare Coin*), a cause of action for malicious prosecution accrues upon entry of judgment in the underlying action in the trial court. (*Id.* at pp. 334–335.) The statute of limitations begins to run upon accrual and continues to run until the date of filing a notice of appeal. (*Id.* at p. 335.) The statute is then tolled during the pendency of the appeal because the plaintiff cannot truthfully plead favorable termination of the prior action, which is an element of the malicious prosecution cause of action. At the conclusion of the appellate process, that is, when the remittitur issues, the statute of limitations recommences to run. (*Id.* at pp. 335–336.)" (*Roger Cleveland*, *supra*, 225 Cal.App.4th at p. 668.)[5]

Here, on May 2, 2013, Judge Real entered an order granting Boladian's motion to dismiss the underlying action with prejudice. Twenty-nine days later, on May 31, 2013, Clinton filed a notice of appeal to the Ninth Circuit. On May 8, 2014, the Ninth Circuit dismissed Clinton's appeal for failure to file an opening brief. On March 25, 2015, Boladian filed the instant action for malicious prosecution. Excluding the time that Clinton's appeal was pending in the Ninth Circuit, the instant action was filed less than one year after Judge Real entered judgment in the underlying action.[6]

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[5] *Roger Cleveland* was disapproved on other grounds by *Lee v. Hanley* (2015) 61 Cal.4th 1225, 1239.)

[6] Because Boladian filed suit for malicious prosecution less than one year after Judge Real entered judgment for Boladian in the underlying case, it is unnecessary herein to address whether a malicious prosecution action against an attorney is governed by the one year statute of limitations (§ 340.6, subd. (a)) or by the

Thennisch and Dobrusin, and the trial court, took the position that the malicious prosecution action was filed beyond the one-year statute of limitations because the cause of action accrued on April 1, 2013, rather than May 2, 2013. That is incorrect. Judge Real's April 1, 2013 minute order stated: "The Court hears arguments of counsel. [¶] The Court GRANTS defendants' motion to dismiss, for reasons as stated on the record. [¶] *The Court will issue a proposed order*." (Italics added.) Thereafter, on May 2, 2013, Judge Real signed and entered an order dismissing Clinton's action with prejudice.

As discussed above, a cause of action for malicious prosecution accrues upon entry of judgment in the underlying action in the trial court. (*Roger Cleveland*, *supra*, 225 Cal.App.4th at p. 668.) The April 1, 2013 minute order expressly called for the issuance of a proposed order, to be followed by a formal order of dismissal. Further, the Local Rules for the Central District of California provide at rule 58-6 as follows: "Notation in the civil docket of entry of a memorandum of decision, an opinion of the Court, or a minute order of the Clerk shall not constitute entry of judgment pursuant to F.R.Civ.P. 58 and 79(a) unless specifically ordered by the judge." The April 1, 2013 minute order lacks language to that effect.

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two year statute (§ 335.1). (See *Roger Cleveland*, *supra*, 225 Cal.App.4th at p. 668 [applicable statute of limitations for malicious prosecution is section 335.1, irrespective of whether the party being sued for malicious prosecution is the former adversary or the adversary's attorneys].) We note the issue is currently pending before the California Supreme Court. (*Parrish v. Latham & Watkins*, review granted Oct. 14, 2015, No. S228277.)

Thus, the April 1, 2013 minute order did not amount to a final judgment and did not commence the running of the limitations period.

Because the cause of action accrued on May 2, 2013, when Judge Real formally dismissed the underlying action, rather than on April 1, 2013, Boladian's malicious prosecution action was filed less than one year after accrual of the cause of action, taking into account the tolling of the statute while the matter was on appeal to the Ninth Circuit; therefore, the malicious prosecution action was timely.

Nonetheless, the trial court's ruling with respect to the statute of limitations was harmless error because, as discussed below, the trial court's decision was correct in result. " 'No rule of decision is better or more firmly established by authority, nor one resting upon a sounder basis of reason and propriety, than that a ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason. If right upon any theory of the law applicable to the case, it must be sustained regardless of the considerations which may have moved the trial court to its conclusion.' " (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 19.) On our de novo review, we conclude Thennisch and Dobrusin were entitled to a grant of their anti-SLAPP motions, although not on the ground relied on by the trial court.

5. *Boladian failed to make a prima facie showing that Thennisch and Dobrusin initiated, prosecuted, or directed the underlying action.*

To withstand the anti-SLAPP motions, Boladian had the burden to make a prima facie showing, among other things, that Thennisch and Dobrusin initiated, prosecuted, or directed the

underlying action. (*Crowley v. Katleman*, *supra*, 8 Cal.4th at p. 676.) As discussed, Boladian failed in that regard.

To reiterate, Clinton initially was represented in the underlying action by Clough and later by Stroock. The final page of Clinton's original complaint listed Thennisch and the Dobrusin firm as counsel to Clinton, with the notation "Pro Hac Vice Application to be filed." No pro hac vice application was ever filed. With respect to Thennisch's role in the underlying action, Thennisch's moving declaration stated only that before filing the original complaint, Clinton and his attorneys consulted with Thennisch regarding Clinton's potential copyright claims against Boladian.

Boladian, in turn, takes the position that "Thennisch clearly directed and controlled the path of the 2011 Litigation," and that Thennisch was the instigator of the litigation.[7] However, upon review we conclude that Boladian failed to supply evidentiary support for this theory.

First, Boladian relies extensively on a declaration filed by Clough on September 1, 2015. But Boladian never presented this declaration to the trial court in opposition to the motions filed by Thennisch and Dobrusin. The declaration by Clough was filed in support of *Clough's* anti-SLAPP motion, heard by Judge Raphael; it was not presented to or considered by Judge Hammock, who heard and granted the anti-SLAPP motions filed by *Thennisch and Dobrusin*. Therefore, we denied Boladian's request to take

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[7] It is enough if the defendant was instrumental in setting the lawsuit in motion and caused the action to proceed. (*Jacques Interiors v. Petrak* (1987) 188 Cal.App.3d 1363, 1372; *Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1131, fn. 11 [instigator as well as party may be liable].)

judicial notice of the Clough declaration, as our review is confined to the papers presented to Judge Hammock on the instant anti-SLAPP motions.

Next, Boladian asserts "Thennisch admits to being intimately involved with the preparation of the baseless Complaint and the litigation thereafter." In support, Boladian cites to Thennisch's moving papers below, which made no such admission.

Boladian also contends that Thennisch supplied Clough with the Peterer declaration, so as to enable Clinton to maintain his "vendetta" against Boladian and to "drum up" business for Thennisch. For evidentiary support, Boladian cites paragraph 16 of his own declaration below, in which he stated: "Attached as Exhibit 5 is a true and correct copy of a Declaration of Jeffrey Thennisch submitted in one of the Michigan federal court cases referenced above in which he admits providing the Peterer Declaration to Defendant Clough." However, Boladian did not include a copy of Exhibit 5 in the Appellant's Appendix, and therefore Boladian has not shown that Thennisch admitted he gave Clough the Peterer declaration.[8]

We also scrutinize the balance of Boladian's declaration to ascertain any evidentiary support for his theory that Thennisch directed the underlying litigation. Boladian stated he "believe[d]" that Thennisch drafted Clinton's complaint in the underlying action. Boladian also "believe[d]" that Thennisch arranged for

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[8] Even if Boladian had provided us with evidentiary support for his claim that Thennisch gave Clough the Peterer declaration, that would not have established that Thennisch initiated, pursued or directed the 2011 litigation.

Clinton to appear in a news broadcast in February 2013, for the purpose of destroying Boladian's reputation. However, Boladian's belief with respect to the above lacks foundation and therefore does not amount to a prima facie showing of facts which could support a favorable judgment if the evidence submitted by Boladian were credited. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 820.)

Boladian's declaration also stated it was "inappropriate for Thennisch to cause Clinton to file the Peterer Declaration in this . . . lawsuit" in connection with a motion to extend time. However, as discussed, Boladian did not make a showing that Thennisch supplied Clough with the Peterer declaration. We agree with Thennisch's contention that his evidentiary objection that Boladian lacked personal knowledge to make that statement should have been sustained.

In sum, the evidence of Thennisch's and Dobrusin's roles in the underlying action consists of the following: before filing the original complaint, Clinton and his attorneys consulted with Thennisch regarding Clinton's potential copyright claims against Boladian, and Thennisch and Dobrusin were listed on the last page of the original complaint as counsel to Clinton, with the notation "Pro Hac Vice Application to be filed." However, no pro hac vice application was ever filed, and Thennisch and Dobrusin never became counsel of record in the underlying action.

Cole v. Patricia A. Meyers & Associates, APC (2012) 206 Cal.App.4th 1095 (*Cole*) is instructive. There, certain attorneys were counsel of record in an underlying action, although their role "was limited to participating at trial, should there be a trial." (*Id*. at p. 1116.) *Cole* held that because these attorneys "lent their names to all filings in the case, [it]

support[ed] an inference that they 'presented' these filings to the court and thus initiated and prosecuted [the underlying action] along with the [other] defendants." (*Id*. at p. 1118.) *Cole* added that attorneys may avoid liability for malicious prosecution without having to engage in premature work on a case if they refrain from formally associating in until their role is triggered. (*Id*. at p. 1119.)

Here, Thennisch and Dobrusin never formally associated into the underlying action, never filed an application to appear pro hac vice, and never became counsel of record. Thus, Thennisch and Dobrusin were not in a position either to initiate or to prosecute the underlying action.

As for Boladian's alternative theory that Thennisch and Dobrusin "instigated" the underlying action, the evidence discussed above fails to make a prima facie showing in that regard.

We conclude the Boladian plaintiffs failed to meet their burden to make a prima facie showing that Thennisch and Dobrusin initiated, prosecuted, or directed the underlying action. Therefore, Thennisch and Dobrusin were entitled to a grant of their special motions to strike on this ground, and it is unnecessary to address any other grounds for upholding the grant of the special motion to strike.

6. *Attorney fees*.

a. *Appealability*.

A threshold issue is whether the order on the attorney fee motions, entered more than three months after the trial court granted the anti-SLAPP motions, is appealable.

An order granting or denying attorney fees rendered *simultaneously* with a ruling on an anti-SLAPP motion is

reviewable on appeal from the ruling on the anti-SLAPP motion. (§ 425.16, subd. (*i*), § 904.1, subd. (a)(13); *Baharian-Mehr v. Smith* (2010) 189 Cal.App.4th 265, 273-275.) In contrast, an order granting or denying attorney fees rendered *subsequent to* a ruling on an anti-SLAPP motion is not within the scope of the statutory provisions for direct appeal of a ruling on an anti-SLAPP motion and thus is not immediately appealable pursuant to those statutory provisions. (*Doe v. Luster* (2006) 145 Cal.App.4th 139, 145-150; Eisenberg, Cal. Prac. Guide: Civil Appeals & Writs (The Rutter Group 2016) § 2:135.13a.)

However, an attorney fee order entered after the dismissal of an action upon the grant of an anti-SLAPP motion is directly appealable under section 904.1, subdivision (a)(2), as a postjudgment order. "Although denominated an 'order,' the granting of an order dismissing a case on the basis of the anti-SLAPP statute has the same effect as a final judgment. When the trial court issues an appealable order akin to a final judgment, a party may appeal from a subsequent order granting or denying a request for an award of attorney fees and costs as an 'order made after a judgment'—or, here, more aptly described as an order after an appealable order. (Code Civ. Proc., § 904.1, subd. (a)(2); . . . .)" (*Ellis Law Group, LLP v. Nevada City Sugar Loaf Properties, LLC* (2014) 230 Cal.App.4th 244, 251.)

Here, the October 26, 2015 order granting the anti-SLAPP motions ended Boladian's lawsuit against Thennisch and Dobrusin and thus had the effect of a final judgment. Accordingly, the subsequent order on the attorney fee motions was an order made after judgment and therefore appealable.

b. *Boladian's appeal from the attorney fee order.*

Boladian contends that if this court reverses the orders granting the attorney defendants' special motions to strike, the attorney fee awards should also be reversed.

Our affirmance of the orders granting the anti-SLAPP motions disposes of Boladian's contention.

c. *Thennisch's and Dobrusin's appeals from the attorney fee order.*

Thennisch contends the amount of his fee award should be increased by $34,325.30. He contends the trial court arbitrarily deducted $10,000 from the fees claimed on the ground of duplication of efforts, and then improperly disallowed another $24,325.30 because the Thennisch case was staffed by three lawyers instead of two.

Dobrusin similarly contends the trial court erred in arbitrarily reducing its attorney fees by $10,000 on the ground there was duplication of efforts between Dobrusin's counsel and Thennisch's counsel.

Our review is governed by settled principles. "An order granting an award of attorney fees is generally reviewed for abuse of discretion. [Citations.] In particular, '[w]ith respect to the amount of fees awarded, there is no question our review must be highly deferential to the views of the trial court.' ([Citation]; see *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 [recognizing trial court's broad discretion in determining amount of reasonable attorney fees because experienced trial judge is in the best position to decide value of professional services rendered in court]; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 [same].) 'An appellate court will interfere with the trial court's determination of the amount of reasonable attorney fees only

where there has been a manifest abuse of discretion.' [Citations.]" (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1319-1320.)

The trial court had before it clear evidence of duplication of efforts. The declaration of Scott K. Murch, an attorney for Dobrusin, stated that he and his colleague conferred with Thennisch's counsel "about arguments to be made in connection with the preparation [of] Dobrusin's anti-SLAPP motion, Dobrusin's reply to Plaintiffs' opposition to that motion, the hearing on that motion, and the court-ordered supplemental briefs for that motion, and this fee motion." Under the circumstances, we perceive no abuse of discretion in the trial court's decision to disallow $10,000 each as to Thennisch and Dobrusin due to their duplication of efforts.

Further, given the near uniformity of issues, the trial court acted within the bounds of its discretion in concluding that it was unnecessary for Thennisch to staff the case with three attorneys. The trial court reasonably looked to Dobrusin as a benchmark and concluded that because Thennisch and Dobrusin were similarly situated, they should each receive a like award of $68,859 in attorney fees.

We also observe that although the moving papers on the special motions to strike included voluminous exhibits, Thennisch and Dobrusin each filed a 15-page memorandum of points and authorities, Thennisch submitted a two-page moving declaration, and Dobrusin's principal, Eric Dobrusin, filed a one-page declaration.

On the record presented, we reject Thennisch's and Dobrusin's contention that the trial court abused its discretion by awarding each of them only $68,859 in attorney fees.

DISPOSITION

The orders granting Thennisch's and Dobrusin's special motions to strike are affirmed. The order awarding them their attorney fees is also affirmed. Thennisch and Dobrusin shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

LAVIN, J.

JOHNSON (MICHAEL), J.*

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