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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

IBAR SETTLEMENT COMPANY INC. et al., Plaintiffs and Appellants, v. MARGARITA DEANDA, Defendant and Respondent.	B263587 (Los Angeles County Super. Ct. No. BC537545)

APPEAL from an order of the Superior Court of Los Angeles County, Holly E. Kendig, Judge. Affirmed.

Law Offices of William E. Crockett, William E. Crockett and Victoria M. McLaughlin for Plaintiffs and Appellants.

Acker & Whipple, Stephen Acker and Leslie Anne Burnet for Defendant and Respondent.

IBAR Settlement Company, Inc. and its CEO, Stanley R. Schultz (collectively, IBAR), filed a lawsuit against their former employee, Margarita DeAnda. According to IBAR, this action originated out of actions taken by DeAnda after her employment with IBAR ended, related to alleged defamatory statements she made to others about IBAR. The complaint alleges six causes of action based on those statements by DeAnda, which IBAR also alleges constituted a breach of contract and interference with contract and prospective business relations. DeAnda brought a special motion to strike the complaint pursuant to Code of Civil Procedure section 425.16, the anti-SLAPP statute.[1] The trial court granted the motion.

IBAR contends the trial court erred because the causes of action in its complaint were not based on activity protected under the statute, and because it demonstrated a probability of prevailing on its claims. IBAR further contends the court abused its discretion in denying a motion to allow discovery pending resolution of the anti-SLAPP motion. We affirm.

BACKGROUND

We take the facts from the complaint and from the declaration of Stanley Schultz submitted in opposition to DeAnda's anti-SLAPP motion.

IBAR provides trust advisory services to beneficiaries and trustees of trusts for minors and disabled individuals, including trusts termed "special needs trusts," which preserve eligibility for public benefits by disabled beneficiaries who have received funds from personal injury settlements. IBAR and Schultz normally serve on a trust advisory committee created by a trust, and provide services to ensure that expenditures of trust assets best serve the interests of the beneficiary, comport with the expectations of the court and the trustee, and preserve eligibility for public benefits.

[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated. "SLAPP" is an acronym for "strategic lawsuit against public participation." (*Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1226, fn. 1 (*Tuchscher*).)

DeAnda worked for IBAR as a Trust Administrator between March 2001 and February 2007. Before DeAnda left her employment, Schultz had heard that she was telling parents of trust beneficiaries IBAR was in essence defrauding trusts. After DeAnda's employment was terminated, she and IBAR filed suit against each other in separate civil cases, raising claims related to her leaving her employment. The parties entered into a settlement agreement resolving both cases, in which DeAnda received $57,500. The settlement agreement provided, "The parties agree that they shall not, either orally or in writing, criticize, disparage, or otherwise undermine the reputation of the other."

IBAR alleges that in 2011, parents of trust beneficiaries filed six separate petitions in three counties to remove IBAR from trust advisory committees, alleging IBAR colluded with corporate trustees to loot trusts, preyed on Latino immigrants, and stole from trusts. Schultz suspected that comments by DeAnda had resulted in those petitions' filing but had no evidence to support the suspicion.

Those petitions all were eventually dismissed by the petitioners, but in January 2013, one set of clients, Maricarmen and Angel Barron, re-filed a petition in probate court (the Barron Petition). That petition sought dissolution of the trust advisory committee or removal of IBAR from the committee. During litigation of the Barron Petition, the parties submitted a joint trial statement in which the Barrons listed DeAnda as a witness on their behalf and summarized DeAnda's trial testimony, including that during her employment IBAR had demanded she overbill the Barron trust. IBAR filed a motion in limine to exclude evidence not produced in discovery, including DeAnda's testimony. In their opposition to the motion, the Barrons stated that DeAnda told them IBAR wrongfully terminated her employment, and they represented that she would testify IBAR asked her to overbill "*many*" special needs trusts for her work.

IBAR filed the present complaint the following month. On the basis of those factual allegations, IBAR asserted six causes of action against DeAnda: (1) breach of contract; (2) slander per se; (3) intentional interference with contract or other economic relationship; (4) negligent interference with contract or other economic relationship; (5)

intentional interference with prospective business relations; and (6) negligent interference with prospective business relations.

DeAnda demurred to IBAR's complaint and filed a special motion to strike under section 425.16. In her anti-SLAPP motion, DeAnda asserted that her statements to the Barrons' attorneys and her offer to testify in support of their petition against IBAR were acts in furtherance of her constitutional right of petition or free speech, and her proposed testimony was a matter of public interest. She also argued IBAR could not establish a probability of prevailing on its claims.

IBAR moved for discovery, asserting DeAnda had been disparaging them since at least 2011, unrelated to any litigation. IBAR sought to take depositions of DeAnda and others, as well as to propound written discovery. The trial court denied IBAR's motion for discovery.

IBAR then filed oppositions to DeAnda's demurrer and anti-SLAPP motion, the latter supported by Schultz's declaration setting forth the reasons why IBAR had terminated DeAnda and noting that the petitioners who sought to remove IBAR from trust advisory committees in 2011 had worked with DeAnda when she was at IBAR.

Finding that DeAnda's alleged communications with the Barrons underlay all IBAR's causes of action, the trial court found her actions protected under section 425.16, subdivision (e)(2). The court concluded IBAR failed to demonstrate a probability of prevailing, for reasons including that all of its causes of action were barred by the litigation privilege set forth in Civil Code section 47, subdivision (b). The court granted DeAnda's motion to strike and found her demurrer moot.

DISCUSSION

On appeal, IBAR contends the trial court erred in finding its claims against DeAnda arose out of protected activity and it failed to establish a probability of prevailing on the merits. IBAR additionally contends the court abused its discretion in denying its motion to allow discovery, preventing it from obtaining evidence to oppose DeAnda's anti-SLAPP motion.

I. Legal Principles and Standard of Review Governing Anti-SLAPP Motion

"The anti-SLAPP statute is a procedural remedy to dispose of lawsuits that are brought to chill the valid exercise of First Amendment rights of petition and free speech." (*Taheri Law Group v. Evans* (2008) 160 Cal.App.4th 482, 488.) Section 425.16 provides, "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).) An "'act in furtherance of a person's right of petition or free speech . . . includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law . . . ." (*Id.*, subd. (e).) Section 425.16 is to be construed broadly. (*Id.*, subd. (a).)

We review the trial court's ruling de novo, using a two-step approach. (*Tuchscher*, *supra*, 106 Cal.App.4th at pp. 1231-1232.) We determine first whether the moving party has made a threshold showing that the challenged cause of action arises from protected activity. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88. (*Navellier I*).) If the moving party meets this burden, we determine whether the opposing party has established a probability of prevailing on the claim. (*Ibid*.) "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.) At each step of the analysis, we consider "the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (§ 425.16, subd. (b)(2).)

II. Step 1: Arising from Protected Activity

That a lawsuit was filed after protected activity occurred does not mean the action arose from the protected activity. (*City of Alhambra v. D'Ausilio* (2011) 193 Cal.App.4th 1301, 1307.) In determining whether the threshold "arising from" requirement is met, we look for "the *principal thrust* or *gravamen* of the plaintiff's cause of action." (*Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 188.) A cause of action arises from an act if that act forms the basis for the cause of action. (*Kolar v. Donahue, McIntosh & Hammerton* (2006) 145 Cal.App.4th 1532, 1537.) A cause of action may be triggered by a protected act but not arise from that act. (*Ibid.*) Thus, the "anti-SLAPP statute's definitional focus is not the form of the plaintiff's cause of action but, rather, the defendant's *activity* that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning." (*Navellier I*, *supra*, 29 Cal.4th at p. 92.)

Here, IBAR admits its complaint was triggered by the witness statement in the Barron Petition but contends that statement was not the basis of the complaint. It argues its claims arose instead from DeAnda's disparagement of IBAR and breach of the non-disparagement agreement in contexts outside the Barron Petition, as evidenced by circumstantial evidence of links between her and probate petitioners and by her designation as a witness in the Barron Petition.

We conclude the gravamen of IBAR's claims concerns communications DeAnda made in connection with the Barron Petition. The complaint alleges no other statements made by DeAnda beyond those to the Barrons and their counsel, as stated in the joint trial statement and the motion in limine opposition. Those statements included that IBAR demanded she overbill the Barron trust and other special needs trusts, and that she had been wrongfully terminated.

The complaint's causes of action include no other alleged conduct by DeAnda. In the breach of contract cause of action, IBAR states, "At some time prior to January 8, 2014, DEANDA breached the agreement as set forth above by making disparaging statements to third parties, including that while she was employed by IBAR, IBAR told

her to overbill many trusts, and by stating that she was 'wrongfully terminated by IBAR.'" In the cause of action for slander per se, IBAR alleges that "at some time prior to January 8, 2014, DEANDA stated that among other things, IBAR demanded that [DEANDA] overbill the Trust" and "at some point prior to January 8, 2014, DEANDA stated that IBAR and SCHULTZ requested that she overbill the Barrons, and *many* other special needs trusts." The third through sixth causes of action identify no additional conduct.

In sum, IBAR's complaint is founded solely on DeAnda's proposed testimony and statements in the Barron Petition. The determination of whether the challenged cause of action arises from protected conduct must be determined with reference to the allegations in the operative complaint. (*Brill Media Co., LLC v. TCW Group, Inc.* (2005) 132 Cal.App.4th 324, 330, disapproved of on another ground in *Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 24-25.) Accordingly, IBAR's complaint arises out of DeAnda's statements in the Barron Petition.

IBAR argues DeAnda made similar statements to other parents of trust beneficiaries, pointing to the allegation in the complaint that in 2011 petitions had been filed to remove IBAR in various counties throughout California.[2] Additionally, in the causes of action for breach of contract and slander per se, IBAR alleges that DeAnda made her disparaging and slanderous statements "prior to January 8, 2014," and the latter cause of action includes the allegation, "the words regarding both IBAR and SCHULTZ were directed to and heard by several of IBAR's clients, including but not limited to, the Barrons and several other persons." Further, in his declaration in opposition to the anti-SLAPP motion, Schultz states, "It appeared to be no coincidence that the complainants were ones that had the relationship with Ms. DeAnda while at IBAR. Although I was suspicious that Ms. DeAnda's comments were the genesis and resulted in the initiation of

[2] This paragraph reads in full, "IBAR began to be inundated with matters in which their clients, parents of various beneficiaries and members of various Trust Advisory Committees, filed petitions to remove IBAR in which allegations were made that IBAR colludes with corporate trustees to loot the trusts, that IBAR preys on Latino immigrants, and that IBAR essentially steals from the Trusts."

the complaints, we had no evidence. That is until she suddenly appeared as a witness claiming the same allegations and prepared to testify."

These speculative averments do not permit a reasonable inference that DeAnda was the source of the information underlying those petitions. (Cf. *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 930-932 [in discussing second step of anti-SLAPP analysis, stating the plaintiff relied on "a series of speculative inferences" in attempting to show the defendant defamed him].)

Even if we were to credit the Schultz declaration and conclude it supports an inference that DeAnda made statements about IBAR's overbilling practices, prompting parents of trust beneficiaries to file probate court petitions to remove IBAR from their trust advisory committees, her activity would be protected under the anti-SLAPP statute, just as her statements to the Barrons are. "[C]ommunications preparatory to or in anticipation of the bringing of an action" are protected under section 425.16. (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1115 [finding protected challenged activities included counseling a tenant of the plaintiffs about her tenancy, leading to her filing a small claims case and a complaint with a federal agency].) Anticipatory communications fall within subdivision (e)(2) if they were made "in connection with an issue" in an official proceeding. (*Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255, 1266 (*Neville*).)

In *Neville*, during a dispute between an employer and former employee who allegedly solicited the employer's customers, the employer's attorney sent letters to the employer's clients warning them that contracting with the former employee would violate his employment and confidentiality agreement and suggesting that they not have dealings with him to avoid involvement in potential litigation. (*Neville*, *supra*, 160 Cal.App.4th at pp. 1259-1260.) On appeal from an order granting an anti-SLAPP motion, the appellate court found the letter, although sent before litigation was initiated, anticipated possible litigation and was thus protected. (*Id*. at p. 1268.)

We find this case to be analogous. First, DeAnda's communications to the Barrons, whether made before or after the Barron Petition was filed, were made in

connection with judicial proceedings. Second, any communications about IBAR's wrongdoing that DeAnda made to other parents of trust beneficiaries that prompted them to file probate court petitions were made in connection with those judicial proceedings. The complaint did not allege, and the Schultz declaration did not refer to, any communication between DeAnda and any other third party unrelated to petitions to remove IBAR from trust advisory committees. Accordingly, we find IBAR's complaint arises from activities that fall within the protection of section 425.16.

To the extent that IBAR argues DeAnda's activities cannot be deemed protected because they constituted a breach of contract, that argument fails. Activity in furtherance of the right of petition or free speech is protected whether or not it breaches a contract. (*Vivian v. Labrucherie* (2013) 214 Cal.App.4th 267, 273-274.)

Applied Business Software, Inc. v. Pacific Mortg. Exchange, Inc. (2008) 164 Cal.App.4th 1108 (*Applied Business*) and *Delois v. Barrett Block Partners* (2009) 177 Cal.App.4th 940 (*Delois*), on which IBAR relies, are inapposite. In *Applied Business*, a defendant brought a motion to strike a lawsuit on the ground the lawsuit was brought in retaliation for involvement in another case and as a warning to stay silent about the plaintiff's business practices. (164 Cal.App.4th at p. 1114.) The defendant based those contentions on the fact that the complaint quoted a non-disparagement agreement between the parties from earlier litigation. (*Ibid.*) In holding the lawsuit was not based on protected activity, the appellate court noted the complaint included no allegation that the defendant breached the non-disparagement clause, but instead alleged entirely separate misconduct: the defendant's failure to certify that it had stopped using the plaintiff's software and its continued use of the software after it had agreed to stop using it and so certify. (*Id*. at p. 1117.) Here, IBAR has not alleged independent wrongful acts by DeAnda; it alleges only her statements about IBAR, which are protected activity.

Similarly, in *Delois* a plaintiff alleged the defendant landlord charged him higher rent than agreed in a tenancy termination agreement, and assessed him fees and withheld his security deposit when he vacated a couple of days later than agreed. (177 Cal.App.4th at p. 948.) The court held the complaint was not barred by section 425.16,

because it arose out of breaching conduct that was not protected activity. (*Id*. at p. 953.) By contrast here, the allegedly breaching conduct by DeAnda was protected activity.

Accordingly, we conclude DeAnda met her burden to show that IBAR's claims arose from protected activity.

III. Step 2: Probability of Prevailing on the Claim

Because DeAnda has made the required threshold showing that IBAR's causes of action arise from protected activity, we next consider whether IBAR demonstrated a probability of prevailing on its claims. "In order to establish the necessary probability of prevailing, [a] plaintiff [is] required both to plead claims that [are] legally sufficient, and to make a prima facie showing, by admissible evidence, of facts that would merit a favorable judgment on those claims, assuming [the] plaintiff's evidence were credited." (*1-800 Contacts, Inc. v. Steinberg* (2003) 107 Cal.App.4th 568, 584.)

At this stage of the proceedings, the plaintiff need only demonstrate a "minimum level of legal sufficiency and triability." (*Castleman v. Sagaser* (2013) 216 Cal.App.4th 481, 490.) "The evidence favorable to the plaintiff is accepted as true, while the defendant's evidence is evaluated to determine if it defeats the plaintiff's claim as a matter of law, e.g., on grounds of privilege or immunity." (*Ibid.*) Thus, the plaintiff's burden at this step is akin to the standard on review of a motion for summary judgment, nonsuit, or directed verdict. (*Greka Integrated, Inc. v. Lowrey* (2005) 133 Cal.App.4th 1572, 1581.) As at step 1, "we again consider the pleadings and the supporting and opposing declarations stating the facts on which the claims are based." (*Ibid.*) The "'plaintiff must satisfy the second prong of the test and 'establish *evidentiary* support for [its] claim.'" (*Navellier v. Sletten* (2003) 106 Cal.App.4th 763, 775 (*Navellier II*).)

The trial court determined IBAR could not establish a probability of prevailing on any of its causes of action because DeAnda's alleged statements in connection with the Barron Petition were privileged. We agree.

"A privileged publication is one made: [¶] . . . [¶] (b) In any . . . judicial proceeding . . . ." (Civ. Code, § 47.) Communications to which the privilege applies are

absolutely immune from liability for torts other than malicious prosecution. (*Kashian v. Harriman*, *supra*, 98 Cal.App.4th at p. 913.)

"The principal purpose of [Civil Code section 47, subdivision (b)] is to afford litigants and witnesses [citation] the utmost freedom of access to the courts without fear of being harassed subsequently by derivative tort actions." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 213.) The statute also "promotes the effectiveness of judicial proceedings by encouraging 'open channels of communication and the presentation of evidence' in judicial proceedings," as well as by "encouraging attorneys to zealously protect their clients' interests." (*Id.* at pp. 213-214.)

The privilege "applies to any publication required or permitted by law in the course of a judicial proceeding to achieve the objects of the litigation, even though the publication is made outside the courtroom and no function of the court or its officers is involved." (*Silberg v. Anderson*, *supra*, 50 Cal.3d at p. 212.) "The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." (*Ibid.*)

Any doubts about whether the privilege applies in a given situation will be resolved in favor of applying it. (*Kashian v. Harriman*, *supra*, 98 Cal.App.4th at pp. 592-593.) In the anti-SLAPP context, the litigation privilege "may present a substantive defense a plaintiff must overcome to demonstrate a probability of prevailing." (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 323.)

IBAR alleged that DeAnda said IBAR asked her to overbill special needs trusts and wrongfully terminated her. Even if the statements were made before DeAnda was listed as a witness in the Barron Petition or before other probate petitioners brought their petitions, the litigation privilege would apply, because the statements were made in judicial proceedings by a potential witness, which had a logical relation to the action. (*Silberg v. Anderson*, *supra*, 50 Cal.3d at p. 212; see *Rothman v. Jackson* (1996) 49

Cal.App.4th 1134, 1146 [to be privileged, communicative act "must function as a necessary or useful step in the litigation process and must serve its purposes"].)

On appeal, IBAR argues Schultz's declaration presents circumstantial evidence that DeAnda defamed it to other unidentified parties and interfered with IBAR's contractual relations in ways "not barred by the litigation privilege."[3] We disagree.

As discussed previously, to the extent that DeAnda communicated with parties other than those involved in the Barron Petition, the communications anticipated possible petitions filed in probate court, and thus would fall within the protection of the litigation privilege. (*Rubin v. Green* (1993) 4 Cal.4th 1187, 1191-1192, 1194 [concluding that law firm's actions in soliciting potential clients in anticipated litigation were within the privilege]; *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 781, 783 [litigation privilege extends to communications between private individuals preliminary to the institution of an official proceeding].) There is no evidence that DeAnda communicated with anyone other than those who were involved in probate matters. (See *Navellier II, supra,* 106 Cal.App.4th at p. 775 [at second step of anti-SLAPP analysis, plaintiff must establish evidentiary support for its claim].)

IBAR also argues the litigation privilege does not apply to its breach of contract cause of action. The argument is without merit.

The "litigation privilege does not necessarily bar liability for breach of contract claims. Application of the privilege requires consideration of whether doing so would further the policies underlying the privilege." (*Vivian v. Labrucherie, supra,* 214 Cal.App.4th at p. 276.)

DeAnda's communications supported existing or contemplated probate court proceedings by providing evidence of possible wrongdoing by IBAR as an advisor to special needs trusts. Applying the litigation privilege to those communications furthers

[3] DeAnda argues that assertions in Schultz's declaration regarding purported statements by DeAnda are hearsay and that the declaration was not properly authenticated. However, because the record does not show that DeAnda raised these objections with the trial court, the argument is forfeited. (*In re Carrie W.* (2003) 110 Cal.App.4th 746, 755.)

the policies of affording litigants and witnesses access to the courts without fear of being sued in a subsequent action, and of promoting the effectiveness of the judicial process by encouraging open channels of communication and the presentation of evidence. (*Silberg v. Anderson*, *supra*, 50 Cal.3d at pp. 213-214; see *Vivian v. Labrucherie*, *supra*, 214 Cal.App.4th at pp. 276-277 [finding that the litigation privilege should apply to bar the plaintiff's breach of contract claim because application of the litigation privilege furthered the underlying policies by promoting full and candid responses to a public agency investigation]; *Kachig v. Boothe* (1971) 22 Cal.App.3d 626, 641 [applying the litigation privilege to witnesses who allegedly presented perjured testimony, recognizing the public policy of affording freedom of access to the courts].)

Wentland v. Wass (2005) 126 Cal.App.4th 1484 (*Wentland*), on which IBAR relies, is inapposite. That case also involved a claim for breach of contract involving a non-disparagement agreement, but the breaching conduct was acts within the same ongoing case between the parties. (*Id.* at pp. 1487-1488.) The court concluded that applying the litigation privilege in that case did not further the policies underlying the litigation privilege. (*Id.* at p. 1494.) Here, not to apply the privilege would interfere with litigants' ability to obtain relevant information, including witness testimony, in separate judicial proceedings.

Because we find that applying the litigation privilege to IBAR's breach of contract cause of action furthers the policies underlying the privilege, we conclude that cause of action is barred.

Accordingly, we conclude the trial court did not err in granting DeAnda's anti-SLAPP motion.

IV. Motion to Allow Discovery

When a special motion to strike is filed under section 425.16, all discovery is stayed. (§ 425.16, subd. (g).) Such a stay shields a defendant from the expense of defending against a SLAPP suit before the plaintiff has established a probability of prevailing. (*Paterno v. Superior Court* (2008) 163 Cal.App.4th 1342, 1348.) The court may lift the stay for specified discovery on a showing of good cause. (*Ibid.*) A plaintiff

seeking specified discovery may demonstrate good cause by showing that a defendant or witness has evidence needed to make a prima facie showing on the plaintiff's claims. (*Garment Workers Center v. Superior Court* (2004) 117 Cal.App.4th 1156, 1161.) In determining whether good cause exists, the trial court may consider whether a cause of action's legal deficiencies would render discovery immaterial, whether the evidence needed to make a prima facie showing can be obtained by means other than formal discovery or is available only from the defendant or by subpoena to a third party, and whether the plaintiff has made any attempt to obtain the information through another avenue. (*Id.* at p. 1162; *Paterno v. Superior Court*, *supra*, 163 Cal.App.4th at p. 1351, fn. 4.)

"We review for abuse of discretion the trial court's decision as to whether a plaintiff has complied with the requirements of section 425.16, subdivision (g) to merit discovery prior to a hearing on the motion to strike. [Citations.] 'Under this standard the reviewing court will not disturb the trial court's decision unless it "has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination."'" (*Tuchscher*, *supra*, 106 Cal.App.4th at p. 1247.)

Here, IBAR sought to take depositions of unspecified third parties, and unfocused written discovery of "all written communications DeAnda had with any of IBAR's current and former clients" and "any un-retained attorneys, or private fiduciaries related to" IBAR. The trial court determined that rather than requesting to take "specified discovery," IBAR sought "to avail itself of the entire gamut of discovery."

We conclude the trial court was within its discretion in denying IBAR's motion to allow discovery. IBAR proffered no evidence that DeAnda made disparaging comments outside the context of any pending or anticipated judicial proceedings. (See *Schroeder v. Irvine City Council* (2002) 97 Cal.App.4th 174, 191-192 [no good cause to obtain evidence in discovery where the plaintiff "proffered no evidence other than his own speculation" that the evidence would contain information supporting his claims].) Because the litigation privilege would apply to any evidence of communications between DeAnda and third parties in the context of pending or anticipated judicial proceedings,

further discovery into such communications would not have established a prima facie case of any claims based on such communications.

DISPOSITION

The order granting DeAnda's anti-SLAPP motion is affirmed. DeAnda is entitled to recover costs on appeal.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

JOHNSON, J.

LUI, J.