Filed 1/21/26 Cypers v. Holzer CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

REUVEN JUSTIN CYPERS et al., Plaintiffs and Respondents, v. STEPHEN T. HOLZER et al., Defendants and Appellants.	B338603 (Los Angeles County Super. Ct. No. 23VECV00811)

APPEAL from an order of the Superior Court of Los Angeles County, Shirley K. Watkins, Judge. Affirmed.

Lewis Brisbois Bisgaard & Smith, David D. Samani and Mehek K. Khaira for Defendants and Appellants.

Catanzarite, Kenneth J. Catanzarite and Brandon E. Woodward for Plaintiffs and Respondents.

I. INTRODUCTION

The trial court denied defendants'[1] special motion to strike plaintiffs'[2] malicious prosecution action pursuant to Code of Civil Procedure section 425.16, the anti-SLAPP statute.[3] On appeal, defendants contend the court erred because plaintiffs failed to demonstrate their claim had minimal merit. We affirm.

---

1 Defendants are attorney Stephen T. Holzer (Holzer) and the law firm of Lewitt, Hackman, Shapiro, Marshall & Harlan (Lewitt firm).

2 Plaintiffs are Reuven Justin Cypers (Cypers), also known as Rory J. Cypers, and Residual Income Opportunities, Inc. (RIO).

3 Further statutory references are to the Code of Civil Procedure unless otherwise indicated. "'SLAPP' is an acronym for 'strategic lawsuit against public participation.'" (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 381, fn. 1 (*Baral*).)

II. BACKGROUND[4]

A. *Dispute between Cypers and Granatelli*

Plaintiffs worked in the credit card processing industry and acted as a reseller of services. RIO leased premises located in Agoura Hills (the premises) from which it conducted its business. Joseph R. Granatelli, a childhood friend of Cypers, worked in the automotive industry.

In late 2016, Cypers and Granatelli agreed to co-own and serve as directors and officers of Impact Merchant Solutions, Inc. (Impact), which they "formed to market and promote [m]erchant[ ] services to process credit and debit card transactions related services" to Granatelli's automotive industry contacts. Granatelli had no experience in the merchant services business so plaintiffs agreed to allow him to observe RIO's office operations at the premises.

In April 2017, Granatelli concluded he would not be successful marketing to automotive industry prospects and devised an "exit strategy scheme" to take plaintiffs' business, including their "[m]erchant[ ] accounts, proprietary trade secret

---

[4] In reviewing the order denying a motion to strike under section 425.16, we "consider 'the pleadings, and supporting and opposing affidavits . . . upon which the liability or defense is based.' (§ 425.16, subd. (b)(2).) However, we neither 'weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and evaluate the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law.'" (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.)

information property . . . , files, data, and hundreds of thousands of dollars . . . ." On April 13, 2017, pursuant to his exit strategy scheme, Granatelli forged Cypers's name on a contract concerning a partnership between Cypers and Granatelli, the formation of Impact, and Granatelli's compensation (the putative contract).

On August 23, 2017, after Cypers overheard Granatelli offering to give a competitor trade secrets and customer accounts, Cypers asked Granatelli to leave the premises.

B. *Granatelli's Lawsuits*

1. The Breach of Contract Action

On August 24, 2017, Granatelli, who was represented by defendants[5], filed a verified complaint in the Los Angeles County Superior Court, case No. LC106120 (the breach of contract action), alleging, among other things, breach of contract and accounting. The complaint alleged that plaintiffs had breached the putative contract, which was attached as an exhibit. The attached contract bore the signature of Granatelli and the purported signature of Cypers.

On August 28, 2017, Granatelli (still represented by defendants) filed an ex parte application for a temporary restraining order that would restrain plaintiffs "from taking, transferring, disposing, injuring, damaging, altering or in any

---

[5] Granatelli was also represented by David Gurnick, an attorney employed at the Lewitt firm. Although he was initially named as a defendant, following his death, Gurnick was subsequently dismissed as a defendant.

other way reducing or harming assets of Impact," including the "revenues of the Impact clients . . . ." Granatelli submitted a supporting declaration in which he stated: "There is a specific agreement. The agreement was in writing, signed by the parties. However, Cypers has the final written copy of the agreement and controls the computer records from which I could get a copy. Attached as Exhibit 1 is a copy signed by me. Cypers also signed but he is in possession of the signed copy." Defendants attached a copy of the putative contract as Exhibit 1.

2. Expert Evidence Regarding Forgery

On September 6, 2017, plaintiffs filed an opposition to the request for a temporary restraining order, arguing that the complaint in the breach of contract action was premised on a forgery. In support, they submitted a declaration from Michael Kunkel, a computer forensic analyst, and supporting exhibits. Kunkel declared that he had used computer forensic tools to examine computers previously used by Granatelli and concluded that Granatelli had inserted a photo image of Cypers's signature onto the putative contract. He also explained that his examination demonstrated that on April 6, 2017, at 3:00 p.m., jrgranatelli@granatellimotorsports.com sent to jr@impactmerchantsolutions.com, an agreement that looked like a blank version of the putative contract, that is, it did not include a date, signature lines for Cypers or Granatelli, or the purported signatures of Cypers or Granatelli. Then, on April 13, 2017, at 1:00 p.m., jrgranatelli@granatellimotorsports.com sent to jr@impactmerchantsolutions.com, a copy of the putative contract that now included a "Dated" line, signatures lines for Cypers and

Granatelli, and Cypers's purported signature. Kunkel explained that the agreement "contain[ed] an [*sic*] pictorial image inside of the word document that is made to look like a signature under the name 'Rory J. Cypers.'"

Cypers subsequently filed a police report with the Los Angeles County Sheriff's Department, asserting Granatelli committed forgery.

On September 11, 2017, Granatelli filed a reply and submitted his declaration in support. Granatelli declared that "[t]he [putative contract] is authentic" and "[Cypers's] claim of forgery is false." Granatelli further declared: "The circumstances of the re-transmittal in April 2017 were that [Granatelli] was not receiving the full payments . . . Cypers and [he] had agreed. [Granatelli] was re-transmitting the signed document to show . . . Cypers and RIO's financial officer . . . . That is why the document—which was in existence since January [2017]—was being transmitted on that April 2017 date."

According to a declaration filed by Gurnick: "After [the Cypers plaintiffs] raised the issue of the possible lack of genuineness of the [putative contract], [defendants] retained [their] own forensic expert to investigate the issue. Before this investigation proceeded very far, however, [Gurnick] learned that the Los Angeles County District Attorney was also investigating the issue. [Gurnick] therefore concluded that [he] should await the results of the independent investigation before expending more client resources on the private investigation."

3. The Underlying Action

On October 11, 2017, Granatelli, still represented by defendants, filed a complaint for declaratory relief, styled as a shareholder derivative action, in Los Angeles County Superior Court, case No. LC106344 (the underlying action), the case at issue in the malicious prosecution complaint. Granatelli alleged that: "Pursuant to the written agreement of these two parties, a true and correct copy of which is attached as [an exhibit to the complaint], all new credit-card processing business written after January 1, 2017[,] was and is to belong to [Impact]." The complaint again attached the putative contract as an exhibit. Granatelli named as defendants Cypers, Impact, and various independent sales organizations, and alleged that the independent sales organizations were paying residuals to RIO, rather than to Impact, in violation of the putative contract and sought as relief a declaration that "[p]er the [putative contract] . . . all new accounts acquired after January 1, 2017[,] which would otherwise have gone to [plaintiffs] . . . were supposed to go to [Impact.]"

4. Bifurcated Trial and Withdrawal as Counsel

On November 3, 2017, the trial court ordered the breach of contract action and the underlying action related for all purposes.[6] The court also ordered a bifurcated trial to be held on

---

[6] Plaintiffs request judicial notice of the reporter's transcript of the November 3, 2017, hearing, which was before the trial court in the malicious prosecution action here. The request is granted.

December 18, 2017, to determine whether the putative contract was a forgery and stayed the underlying action.

On December 6, 2017, Granatelli, through defendants, filed a motion to continue the bifurcated trial and to stay both the breach of contract action and the underlying action pending the criminal investigation of Granatelli. The trial court granted the motion.

On February 5, 2018, plaintiffs filed motions seeking sanctions against defendants for the filing of a frivolous complaint.

On February 22, 2018, defendants withdrew as counsel for Granatelli. Lincoln D. Bandlow and Rom Bar-Nissim substituted in as Granatelli's attorneys.[7]

5. Granatelli's Conviction, First Amended Complaints, and Demurrers

On January 28, 2019, Granatelli pled no contest to felony identity theft in violation of Penal Code section 530.5, subdivision (a). Granatelli admitted that he "obtained [Cypers's] signature in order to use it to prepare a false document for submission in [the breach of contract action]" (capitalization omitted) and agreed to pay Cypers $80,000 as restitution.

On August 8, 2019, the trial court lifted the stay.

On December 2, 2019, Gurnick filed a declaration in opposition to plaintiffs' motions for sanctions.

---

[7] Lincoln D. Bandlow, Rom Bar-Nissim and the Law Offices of Lincoln Bandlow, P.C., were named as defendants in the malicious prosecution action.

On December 13, 2019, the trial court ruled on plaintiffs' sanctions motions and denied them. The court, however, observed that plaintiffs' contention that the putative contract was a forgery "appears to be confirmed by a criminal action against [Granatelli]." The court therefore struck the complaint with "leave to amend to allege a lost or missing contract."

On December 20, 2019, Granatelli, now represented by Bandlow, filed first amended complaints in the breach of contract action and the underlying action.[8] Although the first amended complaints did not include the putative contract as exhibits, Granatelli continued to allege the existence of a written and signed agreement between him and Cypers, which contained essentially the same terms as set forth in the putative contract.

Plaintiffs demurred to the first amended complaints. On September 29, 2020, the trial court issued its ruling on the demurrers. In describing the first amended complaint in the underlying action, the court stated, among other things, that "[Granatelli] simply omits reference to the [putative contract]. There is no explanation as to why it was left off. This is a sham pleading." The court sustained plaintiffs' demurrer to Granatelli's first amended complaint in the underlying action without leave to amend.[9]

---

[8] The first amended complaints are not included in our record on appeal.

[9] The trial court also sustained plaintiffs' demurrer to the first amended complaint in the breach of contract action as to Granatelli's third, fourth, fifth, sixth, and seventh causes of action, but overruled the demurrer as to the first and second causes of action. On January 22, 2020, plaintiffs filed cross-complaints against Granatelli in both actions. The court

On December 16, 2020, the trial court dismissed the underlying action with prejudice and entered judgment.

6. Postjudgment Settlement

On December 20, 2021, Granatelli filed a notice of settlement, pursuant to which Granatelli agreed to pay $200,000 to plaintiffs, and the parties agreed to settle and release all remaining claims between them. The settlement agreement listed, among other disputes between the parties, the breach of contract action and the underlying action.

C. *Malicious Prosecution Complaint and anti-SLAPP Motion*

On February 22, 2023, plaintiffs filed the operative complaint for malicious prosecution against, among others, defendants.

On March 5, 2024, defendants filed their special motion to strike the complaint. They argued that plaintiffs could not demonstrate a probability of prevailing on their malicious prosecution claim. In support, defendants submitted a declaration from Holzer and requested judicial notice of court filings in the breach of contract action and the underlying action. Holzer declared that at no time during defendants' representation of Granatelli did he or anyone else at the Lewitt firm "ever know that Granatelli had digitally manipulated the document he presented to us as a valid contract, dated January 24, 2017, as between him and Cypers." He added that "[i]n

---

sustained Granatelli's demurrers to the cross-complaints without leave to amend.

response to [p]laintiffs' claims that Granatelli had presented a forged document, . . . Gurnick and [Holzer] discussed engaging an expert witness to evaluate and opine upon [their] claims. In this regard, [Holzer's] invoices reflect that [he] had discussions with [a] computer forensic expert to perform this task, prior to the case being stayed by the underlying trial court." An invoice attached to his declaration reflected that on October 9, 2017, he had a "[t]elephone conference with Charlie Ballot regarding retention as computer expert."

Plaintiffs filed an opposition and submitted their own exhibits in support. Defendants filed a reply.

On April 17, 2024, the trial court heard argument on the special motion to strike and took the matter under submission. On April 19, 2024, the trial court granted the requests for judicial notice. The court denied the motion, finding plaintiffs had met their low burden of showing that they could prevail on their malicious prosecution complaint. Defendants timely appealed.

III. DISCUSSION

A. *Legal Standards*

"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. We have 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.'" (*Baral*, *supra*, 1 Cal.5th at pp. 384–385, fn. omitted.) We review the trial court's order de novo. (*Sweetwater Union High School Dist. v. Gilbane Building Co.* (2019) 6 Cal.5th 931, 940.)

The parties do not dispute that defendants satisfied their first prong burden of showing that the challenged action for malicious prosecution arose from activity protected by section 425.16. (*Citizens of Humanity, LLC v. Ramirez* (2021) 63 Cal.App.5th 117, 127 (*Citizens of Humanity*).) Accordingly, we turn to prong two—whether plaintiffs have demonstrated a probability of prevailing on their claim for malicious prosecution.

To prevail on a malicious prosecution action, a plaintiff must establish that: "'"(1) the defendant brought (or continued to pursue) a claim in the underlying action without objective probable cause, (2) the claim was pursued by the defendant with subjective malice, and (3) the underlying action was ultimately resolved in the plaintiff's favor." [Citation.]' [Citation.]" (*Citizens of Humanity*, *supra*, 63 Cal.App.5th at p. 128.)

B. *Analysis*

1. Probable Cause

"'The question of probable cause is "whether, as an objective matter, the prior action was legally tenable or not." [Citation.] "A litigant will lack probable cause for his action either if he relies upon facts which he has no reasonable cause to believe to be true, or if he seeks recovery upon a legal theory which is untenable under the facts known to him." [Citation] "In a situation of complete absence of supporting evidence, it cannot be adjudged reasonable to prosecute a claim."' [Citation.] Thus, "'probable cause is lacking 'when a prospective plaintiff and counsel do not have evidence sufficient to uphold a favorable judgment or information affording an inference that such evidence can be obtained for trial.'"' [Citations.] [¶] The court must "'make an objective determination of the "reasonableness" of [defendant's] conduct, i.e., to determine whether, on the basis of the facts known to [defendant], the institution [and prosecution] of the [lawsuit] was legally tenable.'" [Citation.] "'The test applied to determine whether a claim is tenable is 'whether any reasonable attorney would have thought the claim tenable.'" [Citation.]" (*Golden State Seafood, Inc. v. Schloss* (2020) 53 Cal.App.5th 21, 33 (*Golden State Seafood*).)

The underlying action was premised on the authenticity of the putative contract. The evidence the parties submitted in support of and opposition to the anti-SLAPP motion show that: (1) on August 28, 2017, Granatelli submitted a declaration in which he stated that he had signed the putative contract and that he could not access the records that included the version of the

agreement that had been signed by Cypers; (2) two weeks later, Granatelli now claimed that the putative contract, which bore both his and Cypers's signatures, was authentic; and (3) a forensic analysis demonstrated that someone who had previously used Granatelli's computer had inserted an image of Cypers's signature onto a blank version of the putative contract. Based on this sequence of events, it is probable a jury would find that no reasonable attorney could believe that that the purported contract was authentic. (See *Golden State Seafood*, *supra*, 53 Cal.App.5th at p. 37 [where a lawyer actively advocated a client's suddenly changed statement at trial and abandoned facts as pleaded in the complaint, "it is probable a jury could find [the lawyer] knowingly prosecuted a false claim"].)

Defendants counter that an attorney does not lack probable cause unless the attorney *knows* that a client's representations are false. They cite *Morrison v. Rudolph* (2002) 103 Cal.App.4th 508, 513 (*Morrison*), overruled in part by *Zamos v. Stroud* (2004) 32 Cal.4th 958, 973, as authority for the proposition that an "'attorney may rely on [the statements of a client] as a basis for exercising judgment and providing advice, unless the client's representations are known to be false.'" Defendants' citation to *Morrison* is misguided. The court in *Morrison* also recited that although an attorney is generally entitled to rely on information provided by a client, "[a]n exception to this rule exists where the attorney is on notice of specific factual mistakes in the client's version of events." (*Ibid.*) As we note above, the evidence submitted in connection with the motion to strike demonstrated that defendants were on notice that Grantelli's statement that the purported contract was authentic was inconsistent with his earlier version of events (that he did not have access to the fully

signed contract), contrary to the forensic evidence (that he had forged Cypers's signature on the contract), and therefore almost certainly false.

For similar reasons, defendants' citation to *Litinsky v. Kaplan* (2019) 40 Cal.App.5th 970 (*Litinsky*) is inapposite. In *Litinsky*, before filing a complaint in the underlying action against Litinsky, the attorney defendant had been presented with a purported agreement by the attorney's client, Harutyunov, which included a fax header. (*Id.* at p. 975.) After filing the complaint, the attorney continued to represent Harutyunov on the complaint even after she was "[f]aced with competing versions of the facts offered by [the party opponent] and [her client.]" (*Id.* at p. 983.) In *Litinsky,* the attorney defendant submitted evidence in support of her anti-SLAPP motion that: "(1) Harutyunov had testified at his deposition that the [purported commission agreement between him and Litinsky] was genuine; (2) Harutyunov and Petrosyan [a third party witness] had provided declarations in response to Litinsky's motion to quash, attesting to the validity of the [c]ommission [a]greement with Litinsky; (3) the trial court had denied Litinsky's motion in an order that seemed to give credence to the Harutyunov and Petrosyan declarations; (4) Petrosyan had provided copies of invoices from Litinsky's gallery that contained a fax header with the same number as the fax line on the [c]ommission [a]greement; and (5) [the attorney defendant] had retained an expert who was prepared to testify that the fax header on the [c]ommission [a]greement was genuine." (*Id.* at p. 977.)

In support of her opposition to the anti-SLAPP motion, Litinsky submitted her own declaration, denying that she had

heard of Harutyunov prior to the litigation, that she had ever signed the commission agreement, and that her art gallery ever owned a fax machine. (*Litinsky*, *supra*, 40 Cal.App.5th at pp. 977–978.) Litinsky also submitted a declaration from her attorney, who advised the attorney defendant that Litinsky had testified against Petrosyan in a fraud lawsuit and that Litinsky's art gallery never owned a fax machine. (*Id.* at p. 978.) Litinsky's attorney also retained a forensic document specialist, who was prepared to opine that Litinsky's signature appeared to have been copied from an invoice sent to Petrosyan. (*Ibid.*) "[The attorney] testified that he 'conveyed to [the attorney defendant] all of [the] expert opinions and the bases for his opinions.'" (*Ibid.*)

On this record, the court in *Litinsky*, *supra*, 40 Cal.App.5th 970, concluded that: "Faced with competing versions of the facts offered by Litinsky and Harutyunov, [the attorney defendant] could accept Harutyunov's version, even if she thought Litinsky was more likely to prevail. As our Supreme Court explained, 'A litigant or attorney who possesses competent evidence to substantiate a legally cognizable claim for relief does not act tortiously by bringing the claim, even if also aware of evidence that will weigh against the claim. Plaintiffs and their attorneys are not required, on penalty of tort liability, to attempt to predict how a trier of fact will weigh the competing evidence, or to abandon their claim if they think it likely the evidence will ultimately weigh against them. They have the right to bring a claim they think unlikely to succeed, so long as it is arguably meritorious.' (*Wilson* [*v. Parker, Covert & Chidester* (2002)] 28 Cal.4th [811,] 821.)" (*Litinsky*, *supra*, 40 Cal.App.5th at p. 983.)

By contrast, here, Granatelli's declaration was not only inconsistent with his earlier sworn statement that he did not

have access to the fully executed contract, but it also failed to refute any part of Kunkel's declaration regarding the authenticity of the putative contract. Granatelli declared that he had "retransmitted" the agreement in April 2017 to show Cypers and RIO's chief financial officer the money that he was owed. The two e-mails "re-transmitted" by Granatelli, however, included one that attached a version of the putative contract that included no signatures and another that included a pictorial image of Cypers's purported signature. Granatelli's declaration did not explain why his re-transmission of the agreement *did not include* the putative contract.

Finally, defendants' citation to *Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863 (*Sheldon Appel*), in support of their contention that attorneys do not have a "'duty to investigate'" an opposing party's conflicting assertion, is inapposite. In that case, our Supreme Court held that inadequate *legal research* by an attorney cannot serve as an independent basis for proving lack of probable cause because such a holding would "shift[ ] the focus of the probable cause inquiry from the objective tenability of the prior claim to the adequacy of the particular defendant's performance as an attorney. . . . Allowing inadequate research to serve as an independent basis for proving the absence of probable cause on the part of an attorney would tend to create a conflict of interest between the attorney and client, tempting a cautious attorney to create a record of diligence by performing extensive legal research, not for the benefit of his client, but simply to protect himself from his client's adversaries in the event the initial suit fails." (*Id.* at p. 883.) Here, defendants were confronted with factual evidence that the putative agreement was forged. This evidence did not require any legal research.

2. Malice

"We now move to the malice element, which 'goes to the defendant's subjective intent in initiating the prior action.' [Citation.] '[M]alice is present when proceedings are instituted primarily for an improper purpose. Suits with the hallmark of an improper purpose are those in which . . . "'. . . the person initiating them does not believe that his claim may be held valid [or] the proceedings are begun primarily because of hostility or ill will . . . ."' [Citation.] 'Since parties rarely admit an improper motive, malice is usually proven by circumstantial evidence and inferences drawn from the evidence.' [Citation.]" (*Cuevas-Martinez v. Sun Salt Sand, Inc.* (2019) 35 Cal.App.5th 1109, 1122.)

"[I]f the trial court determines that the prior action was not objectively tenable, the extent of a defendant attorney's investigation and research may be relevant to the further question of whether or not the attorney acted with malice." (*Sheldon Appel*, *supra*, 47 Cal.3d at p. 883.) "Malice does not require that the defendants harbor actual ill will toward the plaintiff in the malicious prosecution case, and liability attaches to attitudes that range "'from open hostility to indifference. [Citations.]"'" (*Cole v. Patricia A. Meyer & Associates, APC* (2012) 206 Cal.App.4th 1095, 1113–1114.)

Here, the record supports a finding that defendants had doubts as to the viability of Granatelli's allegations before they filed the underlying action. Indeed, Holzer and Gurnick submitted declarations in which they admitted that after plaintiffs claimed the putative contract was forged, the two attorneys discussed engaging a forensic expert. And, Holzer's

invoices demonstrate that on October 9, 2017, he had a telephone conference with a "computer expert." Despite "taking steps" to investigate the genuineness of the putative contract, defendants, without obtaining any information that contradicted the forensic evidence submitted by plaintiffs, filed the underlying action on October 11, 2017. They did so absent evidence of any pressing deadline for the filing of the underlying action.[10] Plaintiffs therefore sufficiently demonstrated minimal merit for the malice element of malicious prosecution.

3. Favorable Termination

Finally, we consider whether plaintiffs could establish that the underlying matter was terminated in their favor. "[F]avorable termination requires favorable resolution of the underlying action in its entirety, not merely a single cause of action. [Citation.]" (*Citizens of Humanity*, *supra*, 63 Cal.App.5th at p. 128.) And, "the action must have been terminated on a basis which reflects upon the innocence of the underlying defendant. 'A "'favorable' termination does not occur merely because a party complained against has prevailed in an underlying action. While the fact he has prevailed is an ingredient of a favorable termination, such termination must further reflect on his innocence of the alleged wrongful conduct.

---

[10] "A claim for declaratory relief is subject to the same statute of limitations as the legal or equitable claim on which it is based." (*Bank of New York Mellon v. Citibank, N.A.* (2017) 8 Cal.App.5th 935, 943.) Here, Granatelli's declaratory relief action was premised on the existence of a purportedly written contract and therefore was subject to a four-year statute of limitations. (§ 337, subd. (a).)

If the termination does not relate to the merits—reflecting on neither innocence of nor responsibility for the alleged misconduct—the termination is not favorable in the sense it would support a subsequent action for malicious prosecution." [Citation.] "'[W]hen the underlying action is terminated in some manner other than by a judgment on the merits, the court examines the record "to see if the disposition reflects the opinion of the court or the prosecuting party that the action would not succeed."' [Citations.]" [Citation.] "Should a conflict arise as to the circumstances of the termination, the determination of the reasons underlying the dismissal is a question of fact. [Citation.]" [Citation.]' [Citation.]" (*Id.* at pp. 128–129.)

"[A] dismissal on technical or procedural, rather than substantive, grounds is not considered favorable for purposes of malicious prosecution. [Citation.] These include dismissals for lack of jurisdiction, for lack of standing, to avoid litigation expenses, or pursuant to settlement. [Citation.] Generally, a dismissal resulting from a settlement does not constitute a favorable termination because the dismissal reflects ambiguously on the merits of the action. The purpose of a settlement is specifically to avoid a determination on the merits. [Citation.] When litigation is terminated by agreement 'there is ambiguity with respect to the merits of the proceeding and in general no favorable termination for purposes of pursuing a malicious prosecution action occurs. [Citations.]' [Citation.] Even if the action was tried to a verdict, a subsequent bilateral settlement in which each side gave up something of value (reduced payment accepted in exchange for waiving right to appeal) defeats favorable termination as a matter of law. [Citation.]" (*Citizens of Humanity*, *supra*, 63 Cal.App.5th at p. 129, fn. omitted.)

Here, the trial court entered judgment dismissing the underlying action, following the sustaining of demurrers. Then, following the entry of judgment, the parties entered into a postjudgment settlement. According to defendants, the court's sustaining of the demurrer was not a decision on the merits because it was based on the sham pleading doctrine. On the facts here, we disagree.

The purpose of the sham pleading doctrine is to "'prevent [an] amended pleading which is only a sham, when it is apparent that no cause of action can be stated truthfully.' [Citations.]" (*JPMorgan Chase Bank, N.A. v. Ward* (2019) 33 Cal.App.5th 678, 691.) The trial court sustained a demurrer to the first amended complaint under the sham pleading doctrine because Granatelli had amended the complaint by simply omitting reference to the putative contract, which the court had found was forged. The court's entry of judgment therefore was a determination on the merits of the action. (See *Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 342–343 [a determination, based on the parol evidence rule, that "'there was no substantial evidence to support the [underlying] claims for breach of contract or fraud'" was a "substantive termination in the malicious prosecution context"].)

Defendants next contend that the parties' postjudgment settlement defeats a finding that the matter terminated in plaintiffs' favor. Pursuant to the terms of the settlement agreement, Granatelli (who had already agreed to pay Cypers $80,000 in restitution as part of his plea in the criminal matter) agreed to pay $200,000 to plaintiffs and all the parties agreed to dismiss all remaining claims. This was not a resolution in which "both sides give up anything of value in order to end the litigation . . . ." (*Ferreira v. Gray, Cary, Ware & Freidenrich* (2001) 87

Cal.App.4th 409, 413.) Instead, "[b]ecause [the malicious prosecution plaintiff] received a favorable judgment in the underlying proceeding and settled without giving up any portion of the judgment in his favor, we hold that the parties' settlement constitutes a favorable termination." (*Siebel v. Mittlesteadt* (2007) 41 Cal.4th 735, 743.)

IV. DISPOSITION

The order denying defendants' anti-SLAPP motion is affirmed. Plaintiffs are awarded costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KIM (D.), J.

We concur:

MOOR, Acting P. J.

KUMAR, J.*

---

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