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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

CASTER MODELO, LLC, Cross-complainant and Respondent, v. VIVOLI SACCUZZO, LLP, Cross-defendant and Appellant.	B342463 (Los Angeles County Super. Ct. No. 22STCV39168)

APPEAL from an order of the Superior Court of Los Angeles County, Bruce G. Iwasaki, Judge. Affirmed.

Gregor Law Offices, T. Steven Gregor; Vivoli Saccuzzo and Michael W. Vivoli for Cross-defendant and Appellant.

Zohar Law Firm and Daniel Yehuda Zohar for Cross-complainant and Respondent.

As part of their agreement to invest jointly in certain real property, Lancaster Eagle, LLC (Lancaster) and Caster Modelo, LLC (Caster) created a bank account to hold the property's earnings and pay its expenses. The agreement prohibited unauthorized use of the bank account. After disputes arose between them, Lancaster sued Caster. During the litigation, Lancaster paid its attorneys Vivoli Saccuzzo, LLP (Vivoli) $25,000 from the bank account. Asserting this was an unauthorized use of the joint account, Caster cross-complained against Lancaster and Vivoli for conversion and civil theft of the $25,000.

Vivoli filed an anti-SLAPP[1] motion to strike the claims against it, claiming litigation funding is protected conduct. The trial court denied the motion, finding Vivoli did not satisfy its burden under the first prong of the anti-SLAPP analysis to show that Caster's claims "arose from" protected activity.

Vivoli now appeals, and we find no error. The wrong complained of is not the filing or funding of litigation, but the misappropriation of funds belonging to Caster. Allegations that Lancaster used the funds to pay its legal fees merely describe evidence that the use of the monies was unauthorized and thus wrongful. Because the claims at issue do not arise from protected conduct, the trial court properly denied the anti-SLAPP motion.

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[1] SLAPP is an acronym for "strategic lawsuit against public participation." (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57.) For clarity, we also refer to a "SLAPP" or "anti-SLAPP" motion as "a special motion to strike"—the language used in the statute (Code Civ. Proc., § 425.16, subd. (b)(1)). Unspecified statutory references are to the Code of Civil Procedure.

BACKGROUND

As this appeal concerns only the anti-SLAPP motion filed by Vivoli, we limit our summary of the factual and procedural background accordingly.

A. Procedural Background Prior to Vivoli's Anti-SLAPP Motion

1. *The Initial Complaint*

In December 2022, Lancaster and Morad Ben Neman (together, the Lancaster Parties) sued Caster and Caster's equitable owners, including Payam Bahari, and their affiliated entities.

2. *Caster's First Amended Cross-complaint*

In a first amended cross-complaint (FAXC), Caster sued the Lancaster Parties and Vivoli for conversion (third cause of action) and civil theft and receipt of stolen funds pursuant to Penal Code section 496 (fifth cause of action).

The FAXC alleged that in February 2022, Caster and Lancaster entered into a written agreement to purchase certain property (the Property) as equal tenants in common, and to manage, lease, and potentially sell the Property. The agreement provided "all revenue derived directly from the Property, if any, shall be first applied to payment of or set aside as a provision for expenses and expenditures pertaining to the Property as determined by the [c]o-[t]enants and then to establish and maintain an adequate reserve account and then upon the unanimous consent of the [c]o-[t]enants will distribute the excess funds to the [c]o-[t]enants based on a fifty-fifty basis."

The agreement called for the creation of a joint bank account, where the parties were to deposit all funds related to the

Property (the Bank Account). For the first year, Lancaster would be responsible for the day-to-day management of the Property. Thereafter, the co-tenants would meet annually to determine which would act as the day-to-day manager. Except for the general management of the Property, "[a]ll decisions made in relation to th[e] [a]greement and the Property shall be by unanimous consent." The agreement expressly prohibited certain activities without unanimous consent, including the distribution of capital, income, or profits to a co-tenant, or the borrowing of money from the Bank Account.

Paragraph 25 of the FAXC alleged, "Nevertheless, on or about August 1, 2023, Lancaster . . . unilaterally and surreptitiously issued a $25,000 check from the Bank Account to [Vivoli], which check was deposited by [Vivoli], despite the fact that it knew it was not entitled to do so. The check itself clearly showed it was from the joint Bank Account, listing both Caster . . . and Lancaster . . . as the account holders, and in the memo portion it stated[,] 'Neman v. Bahari Family.' . . . Caster . . . did not know about this payment at the time it was made, and it never authorized this payment. When Caster . . . later learned about the payment, it made multiple demands for the funds to be returned. Caster . . . is informed and believes, and thereupon alleges, that this money has never been returned or deposited back into the Bank Account by Vivoli . . . ."

The third cause of action for conversion alleged Caster had an ownership interest in and a right to possess one-half of the monies in the Bank Account. The Lancaster Parties and Vivoli substantially interfered with "[Caster]'s property by knowingly taking possession of funds" in the Bank Account and "refused to return these funds after demand." The fifth cause of action for

civil theft alleged that the Lancaster Parties and Vivoli received money that they knew was stolen from Caster.

The FAXC attached the tenancy in common agreement and a copy of the check made out to Vivoli for $25,000 from payors Caster and Lancaster.

3. *The Lancaster Parties' Anti-SLAPP Motion*

Before Vivoli filed the anti-SLAPP motion that is the subject of this appeal, the Lancaster Parties (represented by Vivoli) filed an anti-SLAPP motion to strike, among other things, the third and fifth causes of action for conversion and civil theft.

In July 2024, the trial court denied the motion. The court stated, "Although [Caster] alleges some of that money went to pay [the Lancaster Parties'] lawyer, it also alleges the funds were stolen, and it does not know how the funds were eventually used, if at all. . . . [Caster]'s claims arise from the funds' alleged theft, not how the funds may have been spent." The court further stated, "Even if [the Lancaster Parties] had specifically pointed to allegations that their breach of contract [cause of action] resulted in funding this litigation, or that converting jointly held funds were paid to their own lawyers, such allegations are not part of the elements of the claims, are incidental, and not subject to a special motion to strike." The FAXC's few references to litigation did not "provide elements for the claim . . . . [T]he allegations in [Caster]'s FAXC relate to the underlying dispute that launched this litigation. But this does not mean that any claim in the FAXC is based on, or arose from, protected litigation activity."

B. Vivoli's Anti-SLAPP Motion

1. *Vivoli's Motion*

In August 2024, Vivoli filed its own anti-SLAPP motion seeking to strike from the FAXC the third and fifth causes of action along with portions of paragraph 25 that stated, "which check was deposited by Vivoli . . . , despite the fact that it knew it was not entitled to do so" and "Caster . . . is informed and believes, and thereupon alleges, that this money has never been returned or deposited back into the Bank Account by Vivoli . . . ." (Underscoring omitted.)

Vivoli argued that the allegations against it arose entirely from its representation of the Lancaster Parties in the litigation and/or from the Lancaster Parties' decision to fund the litigation against Caster, which was protected petitioning conduct. The anti-SLAPP statute thus barred Caster from suing Vivoli for its "constitutionally protected conduct in representing its client in this action." Vivoli further argued Caster could not demonstrate a probability of prevailing on its claims because, among other things, the litigation privilege under Civil Code section 47, subdivision (b) applied.

Attorney Michael W. Vivoli's declaration in support of the motion stated that he did not personally endorse or see the check before it was deposited into Vivoli's account. After learning of Caster's objections to the check being paid out of the joint account, he informed Caster's counsel that he "regarded the matter as an accounting issue for the clients to work out amongst themselves, particularly given it was apparently undisputed [Lancaster] had the right to issue 'distribution' checks to themselves provided a 'matching' distribution was made to Caster."

Neman (a Lancaster principal) declared, "a $25,000 check was inadvertently issued out of the Bank Account to Vivoli . . . . The issuance of that check from the Bank Account was a mistake made after a long-time employee . . . left our employ and the issuance of checks was handed over to a new employee unfamiliar with the various bank accounts and vendors." Neman stated, "Neither I nor Lancaster . . . purposefully issued the $25,000 check . . . out of the Bank Account, as this litigation was and is considered a Lancaster . . . financial obligation, and not one of the . . . Property to be borne by the Bank Account." However, Neman also declared that Caster had already received approximately $63,000 more in distributions from the account than had Lancaster and submitted documents evidencing the distributions.

2. *Caster's Opposition*

In opposition, Caster argued the FAXC did not refer to Vivoli's actions as counsel or that the allegedly stolen funds were used to fund the litigation. Even if it had, Caster's claims arose from "theft and retention of stolen funds." (Italics omitted.) Thus, the purported protected activity was not the injury-producing conduct, nor did protected activity supply any of the elements of Caster's conversion or civil theft claims.

Caster also argued that it demonstrated its claims had minimal merit. It pointed to the check itself, which listed Caster as a payor, and evidence demonstrating that Vivoli knew the payment was improper and chose not to return the funds, including emails between Vivoli and Caster's counsel as well as Michael Vivoli's declaration that had been filed in support of the motion. Caster also disputed that it received more in distributions than Lancaster and argued Lancaster received $75,000 more in distributions than Caster did. Caster further

argued the litigation privilege did not apply as neither its conversion claim nor civil theft claim depended on any statements made in litigation.

3. *Vivoli's Reply*

In reply, Vivoli reminded the trial court that it had based its denial of the Lancaster Parties' anti-SLAPP motion upon those parties not knowing how the funds taken from the Bank Account had been used. In contrast, Vivoli argued, it was clear Vivoli received the funds as compensation for its services as the Lancaster Parties' attorney in litigation. Vivoli further argued $125,000 remained in the Bank Account, "with, at most, $75,000 of that sum even arguably in dispute," meaning there remained sufficient monies to make a $25,000 equalizing distribution to Caster, if necessary. (Boldface, underscoring, and italics omitted.) Thus, Caster could not show a probability of prevailing on its claims.

4. *The Trial Court's Ruling*

After hearing arguments from the parties, the court issued a written ruling denying the motion. It found the claims against Vivoli did not arise from litigation or petitioning activity as such conduct did not supply any of the elements for Caster's conversion or civil theft claims. Having so found, the court did not consider whether Caster demonstrated a probability of prevailing on its claims.

DISCUSSION

A. General Legal Principles and Standard of Review

The Legislature enacted section 425.16 "[t]o combat lawsuits designed to chill the exercise of free speech and petition rights." (*Park v. Board of Trustees of California State University*

(2017) 2 Cal.5th 1057, 1060 (*Park*).) Thus, "[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).)

When considering whether to strike a claim, courts undertake a two-prong analysis. "First, the defendant must establish that the challenged claim arises from activity protected by section 425.16." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384.) "The court reviews the parties' pleadings, declarations and other supporting documents to determine what conduct is actually being challenged, not to determine whether the conduct is actionable." (*Coretronic Corp. v. Cozen O'Connor* (2011) 192 Cal.App.4th 1381, 1389.) "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." (*Baral v. Schnitt*, *supra*, at p. 384.) At this second stage, the court 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. (*Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 891.)

We review de novo the trial court's grant or denial of a special motion to strike under the anti-SLAPP statute. (*Park*, *supra*, 2 Cal.5th at p. 1067.)

B. Prong One Analytical Framework

Section 425.16, subdivision (e) identifies four categories of conduct that are " 'in furtherance of' " a defendant's free speech or

petition rights. Vivoli does not specify which categories of section 425.16, subdivision (e) it believes are at issue here, but subdivisions (e)(1) and (e)(2) define protected conduct to include statements made before a judicial proceeding or in connection with an issue under consideration by a judicial body. "The anti-SLAPP protection for petitioning activities applies not only to the filing of lawsuits, but extends to conduct that relates to such litigation, including statements made in connection with or in preparation of litigation." (*Kolar v. Donahue, McIntosh & Hammerton* (2006) 145 Cal.App.4th 1532, 1537.)

Section 425.16, subdivision (a) provides the anti-SLAPP statute "shall be construed broadly," and in keeping with that mandate, "courts have adopted 'a fairly expansive view of what constitutes litigation-related activities within the scope of section 425.16.' " (*Kolar v. Donahue, McIntosh & Hammerton*, *supra*, 145 Cal.App.4th at p. 1537.) Thus, "the expenditure of funds to initiate and prosecute [an] action amount to protected petitioning activity." (*Takhar v. People ex rel. Feather River Air Quality Management Dist.* (2018) 27 Cal.App.5th 15, 28; see also *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056 [" 'Any act' includes communicative conduct such as the filing, funding, and prosecution of a civil action"].) Further, "[n]umerous cases have held that the SLAPP statute protects lawyers sued for litigation-related speech and activity." (*Thayer v. Kabateck Brown Kellner LLP* (2012) 207 Cal.App.4th 141, 154 [collecting cases].)

However, "[n]ot all attorney conduct in connection with litigation, or in the course of representing clients, is protected by section 425.16." (*California Back Specialists Medical Group v. Rand* (2008) 160 Cal.App.4th 1032, 1037.) Nor is the fact that the claims refer to funds used in litigation sufficient by itself to

show that the claims arise from protected activity. (*Manlin v. Milner* (2022) 82 Cal.App.5th 1004, 1020; *Gaynor v. Bulen* (2018) 19 Cal.App.5th 864, 886-887; *Greco v. Greco* (2016) 2 Cal.App.5th 810, 823.)

In *Park*, *supra*, 2 Cal.5th 1057, our Supreme Court set forth how to determine whether a defendant has made a prima facie showing of speech or petitioning rights for purposes of section 425.16: "A claim arises from protected activity when that activity underlies or forms the basis for the claim. [Citations.] Critically, 'the defendant's act underlying the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech.' [Citation.] . . . [T]he focus is on determining what 'the defendant's activity [is] that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning.' [Citation.] . . . In short, in ruling on an anti-SLAPP motion, courts should consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability." (*Id*. at pp. 1062-1063.) "In so doing, the courts should be 'attuned to and . . . respect the distinction between activities that form the basis for a claim and those that merely lead to the liability-creating activity or provide evidentiary support for the claim.' " (*Manlin v. Milner*, *supra*, 82 Cal.App.5th at p. 1019, quoting *Park*, *supra*, at p. 1064; see *Baral v. Schnitt*, *supra*, 1 Cal.5th at p. 394 ["Assertions that are 'merely incidental[,]' . . . 'collateral[,]' " or "provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute"].)

In *Manlin v. Milner*, *supra*, 82 Cal.App.5th 1004, we applied *Park*'s framework to facts akin to those currently before

us. Manlin and Milner jointly owned eight limited liability companies (LLCs); Milner was the managing member of each. (*Id*. at p. 1010.) Manlin sued Milner. Milner and the LLCs, represented by certain attorneys (the Attorneys), cross-complained. (*Ibid*.) In response, Manlin cross-complained on behalf of himself and the LLCs against Milner and the Attorneys. Manlin's cross-complaint included breach of contract claims against Milner and breach of fiduciary duty claims against the Attorneys for diverting funds from the LLCs in order to pay legal expenses. (*Id*. at pp. 1010-1011.) Manlin and the Attorneys specially moved to strike. (*Id*. at p. 1011.) The trial court granted the motion as to the claims based on the payment of funds to maintain a lawsuit. (*Ibid*.)

We reversed, explaining the elements of Manlin's claims were "the self-dealing act of diverting funds from the LLCs in which Manlin owns an interest. The allegation that the cross-defendants engaged in this self-dealing completes the claim. *Why* they did so, for example to fund litigation,—is not an element of the claim, and therefore forms no basis for liability." (*Manlin v. Milner*, *supra*, 82 Cal.App.5th at pp. 1019-1020.) As to the breach of fiduciary duty claim against the Attorneys, we stated, "No element of Manlin's claim depends on the purpose for that diversion, but only on the diversion itself and whether it constituted self-dealing. The diversion may have been to further some protected activity—for example to fund a political campaign or publish a newsletter or fund litigation—but that purpose does not convert Manlin's suit to one arising from the protected activity. The protected use to which [the] cross-defendants put the diverted funds may supply evidence of the selfishness of their self-dealing but does not convert the use itself into the basis for

liability. . . . Manlin could have omitted allegations regarding funding lawsuits and still state the same claim." (*Id.* at p. 1020.)

C. Caster's Claims Do Not Arise From Protected Activity

"[A] claim may be struck only if the speech or petitioning activity *itself* is the wrong complained of, and not just evidence of liability or a step leading to some different act for which liability is asserted." (*Park*, *supra*, 2 Cal.5th at p. 1060.) Thus, as stated above, we "consider the elements of the challenged claim and what actions by the defendant supply those elements and consequently form the basis for liability." (*Id.* at p. 1063.)

" 'Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion are the plaintiff's ownership or right to possession of the property at the time of the conversion; the defendant's conversion by a wrongful act or disposition of property rights; and damages.' " (*Spates v. Dameron Hospital Assn.* (2003) 114 Cal.App.4th 208, 221.) " ' " 'The foundation for the action for conversion rests neither in the knowledge nor the intent of the defendant. . . . [Instead], "the tort consists in the breach of what may be called an absolute duty; the act itself . . . is unlawful and redressible as a tort." ' " . . .' [Citation.] Therefore, questions of good faith, lack of knowledge and motive are ordinarily immaterial." (*Oakdale Village Group v. Fong* (1996) 43 Cal.App.4th 539, 544.)

The elements for receiving stolen property under Penal Code section 496 are " '(1) the property was stolen; (2) the defendant knew the property was stolen; and, (3) the defendant had possession of the stolen property.' " (*Lacagnina v. Comprehend Systems, Inc.* (2018) 25 Cal.App.5th 955, 970.)

Vivoli's actions that supply the elements of Caster's conversion and civil theft claims are that Vivoli received and kept funds belonging to Caster without Caster's permission. No element of Caster's claims depends on why Vivoli took the funds or Vivoli's actions as counsel for the Lancaster Parties. (*Manlin v. Milner*, *supra*, 82 Cal.App.5th at p. 1020.) Although knowledge that the property is stolen is an element of civil theft, Vivoli does not describe a nexus between this element and any protected activity. (See *Greco v. Greco*, *supra*, 2 Cal.App.5th at p. 824 ["The test under [§] 425.16 focuses on . . . 'the defendant's *activity* that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning' "].)

Vivoli contends that because the FAXC alleges Lancaster was authorized to use the Bank Account to pay "expenses and expenditures pertaining to the Property, as determined by [c]o-[t]enants," the reason that Lancaster paid money out of the account—to pay legal fees—becomes relevant and necessary to Caster's claims. We disagree. The allegation that the $25,000 check drawn upon the Bank Account included a memo line stating "Neman v. Bahari Family" merely describes evidence relevant to show that Lancaster's use (and, thus, Vivoli's receipt) of the $25,000 was unauthorized. It is not necessary to Caster's claims that the money was used to pay legal fees; it is necessary only that Caster did not approve the payment—e.g., the withdrawal was used for something other than Property-related expenses. "That a cause of action arguably may have been triggered by protected activity does not entail that it is one arising from such." (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.)

Vivoli's briefing does not reckon with *Park* and ignores entirely our prior holding in *Manlin*. Vivoli instead relies on the pre-*Park* cases of *Sheley v. Harrop* (2017) 9 Cal.App.5th 1147 and *Thayer v. Kabateck Brown Kellner LLP*, *supra*, 207 Cal.App.4th 141, as well as a more recent opinion, *Ramirez v. McCormack* (2025) 113 Cal.App.5th 493, to argue Vivoli met its prong one burden. None of these cases is persuasive authority here.

In *Sheley v. Harrop*, *supra*, 9 Cal.App.5th 1147, a corporation and its majority owners sued the minority owner, who had previously co-managed the corporation. (*Id*. at p. 1154.) The minority owner cross-complained, alleging the majority owners had breached their fiduciary duty "by filing and maintaining a frivolous lawsuit against [her]," converted corporate assets "by wrongfully utilizing corporate assets to fund" the lawsuit, and breached the duty of ordinary care "by wrongfully depleting and wasting corporate assets to fund" the litigation against her. (*Id*. at p. 1155, italics omitted.) The trial court denied an anti-SLAPP motion as to these claims, but the Court of Appeal reversed, explaining that "insofar as a cause of action is based upon the payment of funds to maintain a lawsuit, this constitutes protected activity." (*Id*. at p. 1166.)

Later cases have criticized *Sheley*'s analysis as inconsistent with *Park*, and we agree with that criticism. For example, *Gaynor v. Bulen*, *supra*, 19 Cal.App.5th 864, explained, "*Sheley*'s analysis [is] unpersuasive on the 'arising from' element. [Citation.] *Sheley* was decided before *Park*, and did not have the benefit of *Park*'s clear admonitions regarding the need to identify the specific elements of the claim relied upon by the defendant to invoke the anti-SLAPP statute. [Citation.] Under *Park*, the allegations of wrongful litigation in *Sheley* arguably did not form

the basis for the claims, and instead were examples of the claimed breach of duties." (*Id*. at pp. 885-886.) To the extent that the allegation of wrongful litigation arguably did form the basis for the claims in *Sheley*, for the reasons explained in *Manlin*, the same cannot be said here with regard to the alleged $25,000 misappropriation.

The other two cases on which Vivoli relies are so factually distinguishable that they provide no guidance. In *Thayer v. Kabateck Brown Kellner LLP*, *supra*, 207 Cal.App.4th 141, a law firm represented a husband as a member of a class action. (*Id*. at p. 146.) That class member's wife claimed to be a third-party beneficiary of the litigation and sued the law firm. (*Id*. at p. 147.) The wrongs she complained of included that the firm failed to name a particular entity as a defendant, that the firm had stated each class member had the " 'right to make "substantive decisions in the handling" of these actions' " but the firm gave her husband no opportunity to do so, and that the firm wrongfully deducted 2.5 percent from her husband's class action settlement check. (*Id*. at pp. 147-148, 150.) *Thayer* concluded the "claims . . . 'ar[o]se from' [the law firm]'s constitutionally protected activity undertaken on behalf of the actual clients represented in the . . . litigation." (*Id*. at p. 155, italics omitted.) The claims in *Thayer* bear no similarity to Caster's claims, as Caster's claims do not challenge any of the actions Vivoli took on behalf of its clients.

Vivoli's reliance on *Ramirez v. McCormack*, *supra*, 113 Cal.App.5th 493 fails for the same reason. In *Ramirez*, the plaintiff sued the opposing party's attorney for her conduct during a prior litigation, including "directing process servers, communicating with other counsel, negotiating and drafting a settlement agreement, drafting requests to dismiss and to seal

[an] unlawful detainer action, and advising her clients whether and when to perform according to the terms of the settlement agreement." (*Id*. at p. 501.) The appellate court reversed because, as to prong one, the claims at issue "attacked [counsel]'s legal representation of clients in their efforts to petition the courts." (*Id*. at p. 499.) As just stated, that is not the case here.

Vivoli argues that comparing the court's ruling on the Lancaster Parties' anti-SLAPP motion to the court's ruling on the Vivoli anti-SLAPP motion highlights the latter ruling's erroneous nature. According to Vivoli, the court predicated its denial of the Lancaster Parties' anti-SLAPP motion on the lack of knowledge about how the money taken by the Lancaster Parties was used, whereas in deciding the Vivoli motion the court did know how the money was used. The trial court's rationale when ruling on an earlier motion that was not appealed is irrelevant to our de novo review of the anti-SLAPP motion now before us. Even if it was somehow relevant, the court's ruling on the prior motion did not solely focus on the fact that the court did not know what the allegedly misappropriated money was used for. Rather, the court explained that how the money was spent did not matter to whether the claim arose from protected activity because "[t]he elements of conversion do not include how wrongfully obtained property is used," and that reasoning is consistent with the court's ruling on Vivoli's motion.

Vivoli also argues that it had no contractual or other relationship with Caster (other than as opposing counsel in the litigation) and owed no duty to Caster. Vivoli seems to suggest these facts indicate a nexus between Caster's claims and Vivoli's purported protected litigation conduct on behalf of its client. However, Caster's claims against Vivoli do not depend on any

relationship between them. The claims depend only on Vivoli being the recipient of Caster's stolen property, and every person has a duty not to receive stolen property. (See Pen. Code, § 496.)

Because Vivoli has not demonstrated that Caster's claims fall within the purview of the anti-SLAPP statute, we need not consider whether Caster can demonstrate a probability of prevailing on those claims. (*California Back Specialists Medical Group v. Rand*, *supra*, 160 Cal.App.4th at p. 1037, citing § 425.16, subd. (b)(1).)

DISPOSITION

We affirm the trial court's order denying Vivoli's special motion to strike pursuant to section 425.16. Caster is awarded its costs on appeal.

NOT TO BE PUBLISHED

WEINGART, J.

We concur:

BENDIX, Acting P. J.

M. KIM, J.