Filed 12/8/25 Duarte v. Sunshine Retirement Living CA1/5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

MONICA DUARTE et al., Plaintiffs and Appellants, v. SUNSHINE RETIREMENT LIVING LLC et al., Defendants and Respondents.	A173636 (Contra Costa County Super. Ct. No. C24-00225)

Plaintiffs and appellants Monica Duarte and Barry Bullock (collectively, Plaintiffs) filed a special motion to strike the cross-complaint of defendants and respondents Sunshine Retirement Living LLC (Sunshine) and Antioch Retirement Residence d/b/a Quail Lodge Retirement Community (collectively, Defendants) as a strategic lawsuit against public participation (SLAPP) pursuant to Code of Civil Procedure section 425.16[1] (anti-SLAPP motion). Although subdivision (g) of that section imposed an automatic stay of discovery pending the resolution of the motion (discovery stay), Plaintiffs continued to participate in discovery. For example, they served responses and amended responses to Defendants' document requests and

[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

interrogatories that did not raise any objections based on the stay. Plaintiffs also propounded their own discovery and met and conferred on Defendants' discovery requests after Plaintiffs served the anti-SLAPP motion and raised the stay.

Finding that Plaintiffs waived the discovery stay by their conduct, the trial court granted in part and denied in part two discovery motions filed by Defendants. In doing so, the court awarded Defendants $9,000 in sanctions against Plaintiffs. Plaintiffs now appeal from that sanctions award, contending that it is barred by the discovery stay. We disagree and affirm.

BACKGROUND

Plaintiffs filed their original complaint on January 29, 2024 and their first amended complaint on March 8. Following the trial court's ruling on Defendants' demurrer, Plaintiffs filed a second amended complaint on July 17. Defendants filed their answer and cross-complaint on July 29.

On September 30, 2024, Sunshine served Plaintiffs with its first set of requests for production of documents (RFPs), first set of special interrogatories, and form interrogatories. On that same day, Plaintiffs filed an anti-SLAPP motion, seeking to strike the cross-complaint. Because Plaintiffs did not immediately serve the motion, Defendants did not learn about it until October 15. At that time, they "promptly informed Plaintiffs' counsel that they were never served with the motion."

On October 22, 2024, Plaintiffs served their responses to the RFPs, special interrogatories, and form interrogatories. Although Plaintiffs had filed the anti-SLAPP motion over three weeks earlier, none of the responses mentioned the discovery stay.

Dissatisfied with Plaintiffs' responses, Defendants asked Plaintiffs in writing to meet and confer. In their e-mails to Defendants, Plaintiffs agreed

to extend the deadline for any motion to compel and to provide "amended responses." Plaintiffs did not, however, mention the discovery stay.

On November 18, 2024, Plaintiffs propounded their own discovery on Defendants and served their amended responses to the RFPs and two special interrogatories. Like Plaintiffs' original responses, the amended responses did not mention the discovery stay.

That same day, Plaintiffs served Defendants with the anti-SLAPP motion. In a November 18, 2024 e-mail to Plaintiffs' counsel that included Defendants' counsel, counsel for a codefendant wrote: "All discovery is stayed in this case pending resolution of your anti-SLAPP motion. Do you want to withdraw the discovery or agree to extend the time for responses until thirty days after resolution of the anti-SLAPP motion?" Plaintiffs' counsel responded by e-mail: "Thank you; yes, the deadline is 30+ after the resolution – we can agree to a deadline for clarity once the motion is over."

Plaintiffs and Defendants met and conferred about Defendants' RFPs and interrogatories on November 22, 2024. During their telephone conversation, "Plaintiffs' counsel requested identification of the written discovery responses which Defendants believed to be deficient via email." The parties also "briefly discussed the . . . current stay of discovery following Plaintiffs' anti-SLAPP motion."

On December 7, 2024, Defendants e-mailed Plaintiffs a letter detailing the "deficiencies" in Plaintiffs' responses to the RFPs and interrogatories and asked Plaintiffs to meet and confer again. Plaintiffs agreed to meet and confer on December 11 but canceled. As a result, the parties never met and conferred a second time.

On December 20, 2024, Defendants filed a motion to compel further responses to the RFPs (RFP Motion) and a motion to compel further

responses to the interrogatories (Interrogatories Motion). In the RFP Motion, Defendants asked for sanctions in the amount of $8,360. In the Interrogatories Motion, they asked for sanctions in the amount of $6,460. In their oppositions, Plaintiffs argued, among other things, that their filing of the anti-SLAPP motion stayed all discovery, including Defendants' motions.

The hearing on the anti-SLAPP motion occurred on January 8, 2025. At the hearing, the trial court made an oral ruling granting in part and denying in part the motion and "ordered Plaintiffs' counsel to prepare a proposed order that adopted [its] tentative ruling." The court issued "a Minute Order formalizing its ruling" the next day.

On April 14, 2025, the trial court issued an order granting in part and denying in part the RFP and Interrogatories Motions (discovery order). As part of the discovery order, the court awarded "monetary sanctions" against both Plaintiffs in the amount of "$9,000.00 (collectively between both motions to compel further responses)." In rejecting Plaintiffs' argument that discovery "was stayed as a result of [their] [a]nti-SLAPP [m]otion," the court concluded that "any stay was waived by Plaintiffs serving their own discovery on November 18, 2024, and by responding to written discovery before Plaintiffs filed (and did not serve) their [a]nti-SLAPP motion." The court also concluded "that Plaintiffs waived any stay by meeting and conferring with Defendants['] [c]ounsel re discovery responses."

On April 30, 2025, the trial court filed a written order granting in part and denying in part the anti-SLAPP motion.

Plaintiffs timely appealed from the discovery order.

DISCUSSION

In this appeal, Plaintiffs do not challenge the portion of the discovery order granting in part the RFP and Interrogatories Motions. Instead, they

challenge the award of $9,000 in sanctions "collectively between" the two Motions. As a threshold matter, the parties disagree over the appealability of that award under section 904.1, subdivision (a)(11).[2] We, however, need not resolve that disagreement here. To the extent that the sanctions award is not appealable, we find it appropriate to treat Plaintiffs' appeal as a "petition for an extraordinary writ." (*Manlin v. Milner* (2022) 82 Cal.App.5th 1004, 1022 ["we need not dismiss a direct appeal from" a sanctions order that falls below the $5,000 threshold "if circumstances suggest the appeal should be treated as a petition for an extraordinary writ"].) Turning to the merits, we conclude that Plaintiffs waived any challenge to the discovery order, including its award of sanctions, based on the discovery stay and therefore affirm.[3]

A. Standard of Review

"[T]he abuse of discretion standard of review ordinarily applies . . . to review of an order imposing discovery sanctions for discovery misuse." (*Britts v. Superior Court* (2006) 145 Cal.App.4th 1112, 1123 (*Britts*).) But "where the propriety of a discovery order turns on statutory interpretation, an appellate court may determine the issue de novo as a question of law." (*Ibid.*)

B. Waivability of Discovery Stay

Under section 425.16, subdivision (g), "[a]ll discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to

---

[2] Section 904.1, subdivision (a)(11) states in relevant part that "[a]n appeal . . . may be taken . . . [¶] . . . [¶] [f]rom an interlocutory judgment directing [the] payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000)."

[3] Because we resolve this appeal solely on this ground, we do not reach Defendants' other arguments.

this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision." Plaintiffs contend that this discovery stay is not waivable. We disagree.

Under Civil Code section 3513, "[a]ny one may waive the advantage of a law intended solely for their benefit. But a law established for a public reason cannot be contravened by a private agreement." This section "makes the doctrine of waiver applicable to all rights and privileges that a person is entitled to, including those conferred by statute, unless otherwise prohibited by specific statutory provisions." (*Simmons v. Ghaderi* (2008) 44 Cal.4th 570, 585.) Thus, whether the waiver doctrine applies here is "an issue of statutory interpretation." (*Ibid.*) And the doctrine is only inapplicable if the "language of the statutory scheme and other indications of legislative intent" are "clear." (*Id.* at p. 587.) Otherwise, "any person may waive the advantage of a law intended for his benefit." (*Outboard Marine Corp. v. Superior Court* (1975) 52 Cal.App.3d 30, 41.)

Here, there is nothing in the relevant statutory language that prohibits the application of the waiver doctrine to the discovery stay. To the contrary, section 425.16, subdivision (g), expressly states that a trial court "may order that specified discovery be conducted" "for *good cause*." (Italics added.) Waiver is the " ' "intentional relinquishment of a known right after knowledge of the facts." ' " (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 31 (*Waller*).) As a matter of common sense, a party's knowing and voluntary decision to eschew the benefits of the discovery stay may be good cause for a court to order discovery and impose discovery sanctions

notwithstanding the stay.[4] (Cf. *Tarakjian v. Krone* (1987) 196 Cal.App.3d 1243, 1247 [the appellant's "tacit consent to the state court judgment" precludes him from relying on "the automatic bankruptcy stay . . . to bar [the] respondents' collection efforts"].)

Indeed, section 425.16, the anti-SLAPP statute, "was designed *to protect defendants* from having to expend resources defending against frivolous SLAPP suits unless and until a plaintiff establishes the viability of its claim by a prima facie showing." (*Britts*, *supra*, 145 Cal.App.4th at p. 1124, italics added.) This is why the statute automatically stays discovery pending the resolution of an anti-SLAPP motion. (See *Mattel, Inc. v. Luce, Forward, Hamilton & Scripps* (2002) 99 Cal.App.4th 1179, 1190 ["not only did the Legislature desire early resolution to minimize the potential costs of protracted litigation, it also sought *to protect defendants* from the burden of traditional discovery pending resolution of the motion," italics added].) Thus, the discovery stay is solely intended to benefit defendants or cross-defendants to a SLAPP. Because "[a]ny one may waive the advantage of a law intended solely for their benefit" (Civ. Code, § 3513), we see no reason why Plaintiffs, as cross-defendants, could not waive the benefits of the discovery stay here.

C. Waiver

The waiver of a statutory right "may be . . . implied, based on conduct indicating an intent to relinquish the right." (*Waller*, *supra*, 11 Cal.4th at p. 31.) The party claiming waiver bears the burden of proving " 'it by clear

---

[4] Defendants' two discovery motions, which were properly noticed, appear to satisfy the other requirement—i.e., a "noticed motion"—for this exception to the discovery stay. (§ 425.16, subd. (g) ["The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision"].)

and convincing evidence that does not leave the matter to speculation . . . .' " (*Ibid.*) As explained below, we conclude that the trial court did not abuse its discretion when it found clear and convincing evidence that Plaintiffs impliedly waived any objections based on the discovery stay.

On the same day that Defendants served their discovery requests, Plaintiffs filed their anti-SLAPP motion—which triggered the discovery stay. (§ 425.16, subd. (g) ["All discovery proceedings in the action shall be stayed *upon the filing* of a notice of motion made pursuant to this section," italics added].) Despite this, Plaintiffs served written responses to Defendants' discovery requests on *two* separate occasions without even mentioning the discovery stay, much less objecting based on that stay. This "failure to make [a] timely objection" based on the stay "constitutes a waiver." (*Henry Mayo Newhall Memorial Hospital v. Superior Court* (1978) 81 Cal.App.3d 626, 636; see also §§ 2030.290, subd. (a)(1), 2031.300, subd. (a)(1).) Indeed, it is clear from the discovery statutes "that the Legislature intended that any and all objections [to discovery] are to be made at the earliest timely response." (*Scottsdale Ins. Co. v. Superior Court* (1997) 59 Cal.App.4th 263, 273.) "This clearly require[d] an immediate assertion" of the stay "at the earliest opportunity." (*Ibid.*) Plaintiffs therefore waived the discovery stay.

To the extent that any lingering doubts remain, Plaintiffs' conduct after they served Defendants with the anti-SLAPP motion removes them. On the same day that they served the motion, Plaintiffs propounded their own discovery requests. They also continued to meet and confer over Defendants' discovery requests and even asked Defendants to identify the alleged deficiencies in their responses—a request complied with by Defendants. Viewing this conduct together with Plaintiffs' failure to mention the discovery stay in their responses to Defendants' discovery requests, we find more than

enough evidence to support the trial court's finding that Plaintiffs "waived any stay . . . ." (See *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1005 ["when presented with a challenge to the sufficiency of the evidence associated with a finding requiring clear and convincing evidence, the court must determine whether the record, viewed as a whole, contains substantial evidence from which a reasonable trier of fact could have made the finding of high probability demanded by this standard of proof"].)

Plaintiffs claim that they only met and conferred with Defendants during the discovery stay in order to "placate" Defendants' counsel and to "prevent" Defendants "from bringing an improper and inappropriate [discovery] motion." But Plaintiffs' purported excuse for their conduct during the stay does not explain why they failed to raise the stay in their communications with Defendants before they served their anti-SLAPP motion or in their responses to Defendants' discovery requests. The excuse also does not explain why Plaintiffs propounded their own discovery during the stay. Finally, the excuse does not explain why Plaintiffs asked Defendants to identify the deficiencies in the discovery responses after the anti-SLAPP motion had been served. Under these circumstances, Plaintiffs' excuse rings hollow.

Finally, *Britts* is inapposite. Unlike Plaintiffs, the petitioners in *Britts* repeatedly raised the discovery stay as an objection to the requested discovery (*Britts*, *supra*, 145 Cal.App.4th at pp. 1118–1119) and asserted that they had no obligation to respond to the discovery motion during the stay (*id.* at p. 1120). Thus, *Britts* never had to consider whether the petitioners waived the stay.

Because there was clear and convincing evidence that Plaintiffs waived their right to a stay of the RFP and Interrogatories Motions under section

425.16, subdivision (g), we conclude that the trial court did not abuse its discretion by sanctioning Plaintiffs in the amount of $9,000.

DISPOSITION

The discovery order and its award of sanctions are affirmed. Defendants' request for sanctions on appeal is denied.[5] (See § 907; Cal. Rules of Court, rule 8.276(a)(1).) Both parties shall bear their own costs. (Cal. Rules of Court, rule 8.278(a)(5).)

CHOU, J.

WE CONCUR.

JACKSON, P. J.

BURNS, J.

A173636/ *Duarte v. Sunshine*

[5] We find that Plaintiffs' appeal is neither subjectively nor objectively frivolous. (See *Malek Media Group, LLC v. AXQG Corp.* (2020) 58 Cal.App.5th 817, 834.)