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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

PEGGY MILLER,
Cross-Complainant and Respondent,
v.
LAND VALUE HOLDINGS, LLC,
Cross-Defendant and Appellant.

A145685
(Alameda County
Super. Ct. No. RG13681342)

By this lawsuit, appellant Land Value Holdings, LLC, seeks a declaratory judgment confirming its ownership interests and rights in certain real property and to recover moneys paid for real property taxes. Respondent Peggy Miller filed a cross-complaint against appellant to quiet title in the real property and for ejectment based on her claim of ownership interests and rights in the real property and to recover moneys for damages caused by appellant and for appellant’s use of the property. Appellant, in turn, filed a motion to strike the cross-complaint as a “strategic lawsuit against public participation” pursuant to Code of Civil Procedure¹ section 425.16 (also hereafter referred to as the SLAPP or anti-SLAPP statute). The trial court denied the anti-SLAPP motion after finding that appellant had failed to meet its initial burden of demonstrating that the cross-complaint arose from acts in furtherance of appellant’s right of petition or free speech within the meaning of section 425.16.

¹ All further statutory references are to the Code of Civil Procedure.

In this appeal, appellant contends the trial court erred when it denied its anti-SLAPP motion. Having reviewed the record and the brief submitted by appellant, and for the reasons more fully explained below, we conclude the cross-complaint here is not a SLAPP suit. Accordingly, we affirm.

FACTS

A. Background²

This lawsuit concerns a certain parcel of real property located in Berkeley, California (hereafter referred to as the real property.) Under the will of Richard Garrett (Garrett's will), the real property was bequeathed to Clara Laguins, for her life, with the remainder interest bequeathed to Josephine H. Grissom, Ernestine Gill, Lillian McLean, Frank Garrett, Elworth Garrett, and Wesler Garrett, also known as Robert Wesley Garrett, "or to their surviving issue," in equal shares as tenants in common. The probate court issued a final "order" settling Garrett's estate on January 28, 1993. The final order confirmed Clara Laguins' life estate in the real property. The final order further provided that the remaindermen's interests were subject to two liens, to wit, one in favor of Clara Laguins in the principal sum of \$1,571.15 and, one in favor of Milton W. Cooper in the principal sum of \$1,571.15. The liens were "payable only upon sale, refinancing, or other change of title of this property." Clara Laguins died in October 2009, and by May 2011 all of the named remaindermen had also died.

B. Appellant's Complaint and First Amended Complaint

On May 28, 2013, appellant filed a complaint initially seeking to quiet title in the real property and for ejectment. That pleading was superseded by an April 24, 2014, first amended complaint (FAC), the operative pleading, alleging causes of action for "declaratory relief," and "money had and received." In pertinent part, appellant alleged the real property was currently titled in the name of "Clara Laguins (for her life) with the

² This opinion's Background section is taken from the parties' pleadings and exhibits submitted in connection with appellant's anti-SLAPP motion. However, our decision should not be read and we express no opinion on the accuracy of the "facts" as alleged in the pleadings.

remainder allegedly held by the heirs of Josephine H. Grissom, Ernestine Gill, Lillian, McLean, Wesler Garrett, Frank Garrett, and Elworth Jeff Garrett.” It was further alleged that (1) the parties to the lawsuit were the testate and intestate successors of Clara Laguins, deceased, and all persons claiming by, through, or under Clara Laguins, and all named, as well as unknown, defendants, claiming any legal or equitable right, title, estate, possession, lien, or interest in the real property, (2) Bank of America had recorded a deed of trust against the real property to secure a bank loan; and (3) Milton Cooper might have a lien against the real property. As to the cause of action for “declaratory relief,” appellant claimed “rights and standing” to pursue this action based on allegations that “[b]y way of succession to the interest” in a certain judgment, it had secured a combination of written and oral assignments related to the real property through two successors to Clara Laguins’ lien rights.³ It was further alleged that appellant paid the property taxes on the real property for over five years, thereby preventing the real property from being sold at auction, and that some potential heirs including respondent Peggy Miller (Miller), had asserted an interest in the real property. Thus, appellant sought a declaration as to which parties “are legally responsible for the failure to keep the taxes . . . and to keep the property in insurable condition.” As to the cause of action for “money had and received,” appellant sought to recover the principal sum of \$31,582.92, representing moneys paid for property taxes owing for five years to prevent foreclosure of the real property due to abandonment.

³ According to appellant, in April 2014, it had entered into an agreement with Harold Richards, “one of the heirs at law of Clara Mae Laguins,” who represented that Laguins was owed money “on the judgment entered in case number 231104-5, Alameda County Superior Court, in the amount of \$1,571.15, on January 28, 1993.” Harold Richards purportedly assigned his rights and interest in the judgment, plus all applicable legal interest, to appellant. In consideration of the assignment, appellant agreed to be responsible for all of its own legal fees and costs in pursuing the judgment and to pay Harold Richards the sum of \$1,000 if appellant was able to successfully collect on the judgment. Appellant also agreed to advance the payment of the property taxes owed on the real property “to protect the security interest of the judgment in favor of Clara Mae Laguins.”

C. Cross-Complaint

On May 13, 2014, Miller filed a cross-complaint, which sought to quiet title to the real property and for ejectment.⁴ In pertinent part, Miller alleged that as an issue of a named remainderman described in Garrett’s will, she was entitled to an interest in the real property as of October 1, 2009, the date of Clara Laguins’ death. It was further alleged that appellant claimed ownership of the real property by “adverse possession,” refused to allow Miller to enter the real property, and had either damaged or failed to maintain the real property in good repair. Miller therefore sought (1) an order declaring that she was “the fee title owner of the property;” (2) an order ejecting appellant from the real property on the ground it was not entitled to any right, title, estate, lien, or other interest in the real property; and (3) a monetary award for damages to the real property allegedly caused by appellant and the fair market value of the use of the real property by appellant.

D. Section 425.16 Motion to Strike the Cross-Complaint

Appellant filed a section 425.16 motion to strike all of the causes of action in the cross-complaint. Miller filed a timely opposition. The trial court denied the motion on the ground that appellant had failed to show that the cross-complaint arose from its right

⁴ The cross-complaint named appellant as well as other cross-defendants; except for appellant, none of the other named cross-defendants are parties to this appeal. We also recognize that before appellant filed its notice of appeal on July 13, 2015, Miller filed a first amended verified cross-complaint pursuant to a court order sustaining a demurrer to the cross-complaint with leave to amend. However, the amended pleading is not before us, as “ ‘the original [cross-] complaint remains the operative pleading for purposes of assessing whether [appellant] engaged in protected activity subject to the SLAPP statute.’ ” (*Hecimovich v. Encinal School Parent Teacher Organization* (2012) 203 Cal.App.4th 450, 462.) “An implied stay in the proceedings . . . is necessary so that a [cross-complainant] cannot deprive a [cross-]defendant of the right to the appellate review granted by the Legislature so that the appellate court can determine if the [cross-]defendant had made a prima facie showing. [¶] There would be little benefit in a right to appeal if the [cross-complainant] could get around appellate review by filing an amended pleading. Nor would a competitive rush to the courthouse fulfill the legislative purpose of a quick and inexpensive method of unmasking and dismissing SLAPP suits. . . . Thus, we conclude that the operative pleading for this appeal is the” original cross-complaint. (*Roberts v. Los Angeles County Bar Assn.* (2003) 105 Cal.App.4th 604, 613.)

to petition or free speech within the meaning of section 425.16.⁵ Appellant's timely appeal ensued.

DISCUSSION

It is now well settled that “[c]onsideration of a section 425.16 motion to strike involves a two-step process. ‘First, the court decides whether the defendant [or cross-defendant] has made a threshold showing that the challenged cause of action is one arising from protected activity. The moving defendant’s [or cross-defendant’s] burden is to demonstrate that the act or acts of which the plaintiff [or cross-complainant] complains were taken “in furtherance of the [defendant]’s [or cross-defendant’s] right of petition or free speech under the United States or California Constitution in connection with a public issue,” as defined in the statute. (§ 425.16, subd. (b)(1).) If the court finds such a showing has been made, it then determines whether the plaintiff [or cross-complainant] has demonstrated a probability of prevailing on the claim.’ (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67 [124 Cal.Rptr.2d 507, 52 P.2d 685].)” (*Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 669 (*Peregrine Funding*).) Although our review is de novo (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325), as we now discuss, we agree with the trial court’s denial of appellant’s anti-SLAPP motion.

Appellant bears the “initial burden” of demonstrating that the cross-complaint arose from its protected activity. (*Equilon Enterprises v. Consumer Cause, Inc.*, *supra*, 29 Cal.4th at p. 68.) “However, as our Supreme Court has observed, ‘the “arising from” requirement is not always easily met. [Citations.]’ ([*Ibid.*]) A cause of action does not ‘arise from’ protected activity simply because it is filed after protected activity took place. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76-77 [124 Cal.Rptr.2d 519, 52 P.2d 695].) Nor does the fact ‘[t]hat a cause of action arguably may have been triggered

⁵ The trial court granted appellant’s request to take judicial notice of two documents: (1) the probate court’s final order resolving Garrett’s estate, and (2) a deed of trust recorded against the real property in favor of the Bank of America. However, the trial court did not accept as true the facts contained in those documents.

by protected activity’ necessarily entail that it arises from such activity. (*Id.* at p. 78.) [Rather, we] must instead focus on the substance of [the cross-complaint] in analyzing the first prong of a special motion to strike. (*Scott v. Metabolife Internat., Inc.* (2004) 115 Cal.App.4th 404, 413-414 [9 Cal.Rptr.3d 242]; see *City of Cotati v. Cashman, supra*, 29 Cal.4th at p. 78.) In performing this analysis, our Supreme Court has stressed, ‘the critical point is whether the . . . cause of action itself was *based on* an act in furtherance of [appellant’s] right of petition or free speech. [Citations.]’ (*City of Cotati v. Cashman, supra*, 29 Cal.4th at p. 78.)” (*Peregrine Funding, supra*, 133 Cal.App.4th at pp. 669-670.) Thus, we look to the nature of the dispute to be resolved by the cross-complaint, and analyze whether that “dispute, and not any protected activity, is ‘the gravamen or principal thrust’ of the action.” (*Episcopal Church Cases* (2009) 45 Cal.4th 467, 477.) “If liability is not based on protected activity, the [cross-complaint] does not target the protected activity and is therefore not subject to the SLAPP statute.” (*Haight Ashbury Free Clinics, Inc. v. Happening House Ventures* (2010) 184 Cal.App.4th 1539, 1550.)

Appellant contends it met its burden under the first prong of the section 425.16 analysis because the cross-complaint arises from the litigation activity in the related probate case resolving Garrett’s estate. However, appellant misconstrues the “ ‘overall thrust’ ” of the cross-complaint. (*Baharian-Mehr v. Smith* (2010) 189 Cal.App.4th 265, 273.) Miller seeks relief based on an overarching claim that appellant has wrongfully interfered with her ownership interests in the real property that she purportedly acquired as an issue of a named remainderman described in Garrett’s will. By its FAC, appellant asserts a competing ownership interest in the real property through “adverse possession” and as successor to Clara Laguins’ lien rights. Thus, in filing her cross-complaint, Miller “sought to resolve a *property dispute*. The property dispute is based on the fact that both sides claim ownership of the real property. This dispute, and not any protected activity, is ‘the gravamen or principal thrust’ of the [cross-complaint]. (*Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 193 [6 Cal.Rptr. 3d 494].)” (*Episcopal Church Cases, supra*, 45 Cal.4th at pp. 477-478.) “The additional fact that protected

activity may lurk in the background – and may explain why the rift between the parties arose in the first place – does not transform a property dispute into a SLAPP suit.” (*Id.* at p. 478; see *City of Cotati v. Cashman, supra*, 29 Cal.4th at p. 78 [“responsive but independent lawsuit [may] arise from the same transaction or occurrence alleged in a preceding lawsuit, without necessarily arising from that earlier lawsuit itself”].) Consequently, we conclude the cross-complaint as alleged against appellant is not subject to section 425.16’s special motion to strike.

Because appellant failed to meet its burden under the first prong of the section 425.16 analysis, we do not address whether Miller would have been able to meet her burden under the second prong of the section 425.16 analysis. Accordingly, our decision should not be read and we express no opinion on the merits of the cross-complaint. Appellant is free to challenge the causes of action alleged against it on other grounds and through other procedural means. (*Department of Fair Employment & Housing v. 1105 Alta Loma Road Apartments, LLC* (2007) 154 Cal.App.4th 1273, 1288, fn. omitted.)

DISPOSITION

The order, filed on May 15, 2015, denying Land Value Holdings, LLC’s special motion to strike the cross-complaint, is affirmed. The parties shall bear their own costs on appeal.

Jenkins, J.

We concur:

McGuinness, P. J.

Pollak, J.