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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

ARMOND ALVANDI,

Plaintiff and Appellant,

v.

STANLEY DENIS et al.,

Defendants and Respondents.

B264114

(Los Angeles County
Super. Ct. No. BC548387)

APPEAL from an order of the Superior Court of Los Angeles County, Elizabeth Allen White, Judge. Affirmed.

Law Offices of J. Flores Valdez, J. Flores Valdez for Plaintiff and Appellant.

Law Offices of Stanley Denis, Stanley Denis; Robert D. Feighner for Defendants and Respondents.

INTRODUCTION

Plaintiff Armond Alvandi appeals the order striking his complaint under Code of Civil Procedure section 425.16, the anti-SLAPP statute.¹ The trial court found that Alvandi's claims arose directly out of protected litigation conduct by defendant attorney Stanley Denis, and moreover that Alvandi, who did not file an opposition to the anti-SLAPP motion, failed to demonstrate a probability of prevailing on the merits of his claims. We affirm.

FACTUAL AND PROCEDURAL HISTORY

A. *Alvandi's Complaint*

Alvandi filed a complaint against Denis and his law office (collectively, Denis) on June 11, 2014. After Alvandi filed a first amended complaint, the court sustained Denis's demurrer with leave to amend. Alvandi then filed the operative second amended complaint (the SAC) on December 23, 2014, alleging claims for fraud, abuse of process, unfair business practices, and intentional infliction of emotional distress.

As alleged in the SAC, in 2006, Alvandi began renting a unit in a commercial property in North Hollywood (the property) to operate a cellular phone store. The property was owned by Daniel and Joanne Yem.² Alvandi alleged that he became friends with Daniel and Joanne and helped them "to maintain the Property." In December 2009, Daniel's health was in decline, and he and Joanne allegedly gave "general powers of attorney" to Alvandi. Alvandi also alleged that Daniel gave him a quitclaim deed granting ownership of the property to Joanne. At Daniel's request, Alvandi promised he would "look after Joanne when Daniel was gone."

¹ SLAPP is an acronym for Strategic Lawsuit Against Public Participation. All further statutory references are to the Code of Civil Procedure unless stated otherwise.

² Because they share a surname, we refer to Daniel and Joanne by their first names for clarity.

Alvandi alleges in 2010 he “became the sole person responsible for maintaining the upkeep of the property.” Daniel allegedly instructed Alvandi to cease paying his monthly rent in exchange for his maintenance services. Daniel died in 2011. In late 2012, Alvandi claims he received a “weird” voicemail message from Joanne that there “were people trying to hurt her and stealing money from her.” Alvandi visited Joanne at her home; she appeared “sick and distraught” and an “Asian looking man” tried to prevent Alvandi from speaking to her. The same man was seen taking photographs of the property the following day.

A few days later, tenants of the property received letters from Denis, claiming to represent Joanne and seeking information regarding their rental agreements and proof of payment of rent. According to Alvandi, he was fearful that “these people were trying to hurt Joanne by stealing the Property”; he therefore used his power of attorney to transfer title to the property to an entity called Daniel Yem-Joanne Yem, LLC (the LLC).³ In February 2013, Alvandi notified the tenants of the property that “on behalf of the LLC, rent must be paid to [Alvandi].” It appears that some tenants then began to pay rent to Alvandi, while others paid Denis.

In March 2013, Denis filed a civil lawsuit on behalf of Joanne against Alvandi, seeking to quiet title to the property, among other things (the Yem complaint). Alvandi alleges that Denis “personally verified” the Yem complaint, as well as the subsequent first and second amended complaints. Alvandi further alleges that Denis knew at the time he sent the letters to the property’s tenants, and at the time he filed the Yem complaint, that Joanne lacked the “mental capacity to give consent or retain an attorney,” as she had been diagnosed with “paranoid schizophrenia and dementia” in September 2012.

Accordingly, Alvandi’s SAC alleges Denis acted unlawfully by stating in the letters to tenants and in the verification to the Yem complaint that he represented Joanne

³ The LLC, a Nevada corporation, was also a named plaintiff in the lawsuit, but is not a party to this appeal. According to Denis, the LLC is owned by Alvandi.

and by filing the Yem complaint when he had “no right, power or authority” to act on Joanne’s behalf.

B. The Anti-SLAPP Motion

Denis moved to strike the SAC pursuant to section 425.16, arguing that Alvandi’s claims arose from protected pre-litigation and litigation conduct by Denis.⁴ In support of his motion, Denis submitted his declaration and copies of the letters he sent to the tenants of the property. Alvandi did not file an opposition to the motion to strike. After a hearing on the motion on March 18, 2015, the court granted the motion, striking the SAC. In its ruling, the court found that each of Alvandi’s causes of action arose out of litigation conduct protected under the anti-SLAPP statute, namely “Defendants’ alleged representation of Joanne Yem.” Further, the court found that because he failed to file an opposition, Alvandi did not meet his burden to demonstrate a probability of prevailing on the merits of his claims, as is required under the second step of the anti-SLAPP analysis. Alvandi timely appealed.

DISCUSSION

Denis contends that Alvandi forfeited his right to challenge the granting of the anti-SLAPP motion on appeal.⁵ We agree.

A party’s failure to raise a specific challenge in the trial court generally forfeits the claim on appeal. ““[I]t is fundamental that a reviewing court will ordinarily not consider

⁴ In the first step of a motion to strike pursuant to section 425.16, the defendant must make a prima facie showing that the plaintiff’s cause of action “aris[es] from” protected activity, which includes “qualifying acts committed by attorneys in representing clients in litigation. [Citations.]” (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056; § 425.16, subd. (b)(1).) If a defendant meets this threshold showing, the burden shifts to plaintiff in the second step to establish “a probability of prevailing on the claim. [Citation.]” (*Rusheen v. Cohen, supra*, 37 Cal.4th at p. 1056.)

⁵ “Waiver is the ““intentional relinquishment or abandonment of a known right,”” whereas forfeiture is the “failure to make the timely assertion of a right.” [Citation.]” (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 521-522, fn. 3.) Thus, although the terms “forfeiture” and “waiver” are often used interchangeably, it is more accurate to use the former term when referring to “the loss of the right to raise an issue on appeal due to the failure to pursue it in the trial court.” (*Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 912.)

claims made for the first time on appeal which could have been but were not presented to the trial court.” Thus, “we ignore arguments, authority, and facts not presented and litigated in the trial court. Generally, issues raised for the first time on appeal which were not litigated in the trial court are waived. [Citations.]” [Citation.]” (*Kashmiri v. Regents of University of California* (2007) 156 Cal.App.4th 809, 830.) ““Appellate courts are loath to reverse a judgment on grounds that the opposing party did not have an opportunity to argue and the trial court did not have an opportunity to consider. [Citation.] In our adversarial system, each party has the obligation to raise any issue or infirmity that might subject the ensuing judgment to attack. [Citation.]” (*Ibid.*; see also *Bell v. American Title Ins. Co.* (1991) 226 Cal.App.3d 1589, 1602 [appellants’ failure to timely oppose a motion waived any objections to the resulting order].)

Here, Alvandi did not file an opposition to Denis’s motion to strike. He has therefore forfeited any objections to Denis’s showing of protected activity under the anti-SLAPP statute. Similarly, he cannot seek to establish a probability of prevailing on his claims under the second prong of the anti-SLAPP statute for the first time on appeal.

Alvandi addresses the forfeiture/waiver issue in a single paragraph in his appellate reply brief. He acknowledges that he did not file a written opposition to the motion to strike “due to inadvertence,” but contends that “the motion was vigorously opposed at the hearing.” According to Alvandi’s reply brief, his purported opposition during the hearing on the motion to strike consisted of a single question to the trial court: “Is it proper and legal for an attorney to file papers and appear in [sic] behalf of a person who did not hire him?”

Alvandi has provided no evidentiary or legal citations to support either his factual contention that he opposed the motion orally or his implicit legal argument that an oral opposition would be sufficient to avoid forfeiture here. Moreover, even if Alvandi had provided evidentiary support for the hypothetical question he claims his counsel raised during oral argument, it is unclear how that would satisfy his obligation to raise a timely challenge to the anti-SLAPP motion. As such, Alvandi’s argument opposing forfeiture is, itself, forfeited. (See *Hernandez v. California Hospital Medical Center* (2000) 78

Cal.App.4th 498, 502 [“Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant].”]; *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856 [argument deemed waived for failure to support argument with citations to record]; *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699–700 [issue that is not supported by pertinent or cognizable legal argument may be deemed abandoned].)

In sum, Alvandi failed to challenge the anti-SLAPP motion below and fails to articulate why he should be allowed to raise this challenge for the first time on appeal. We therefore affirm.

DISPOSITION

Affirmed. Respondents are awarded costs on appeal.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.