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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

VIOREL BUCUR,

Plaintiff and Appellant,

v.

ALBERT GALIMIDI et al.,

Defendants and Respondents.

E063899

(Super.Ct.No. CIVDS1503994)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael A. Sachs, Judge. Affirmed.

Viorel Bucur, in pro. per., for Plaintiff and Appellant.

Law Offices of Dilip Vithlani and Dilip Vithlani for Defendant and Respondent.

Chuck Wasarhelyi, in pro. per., and Eva Kulczycki, in pro. per., for Defendants and Respondents.

I

INTRODUCTION¹

Plaintiff and appellant Viorel Bucur, appeals from the trial court's order granting defendants' anti-SLAPP motions. (§§ 425.16, subd. (i); 904.1, subd. (a)(13).)² Because it is abundantly clear that defendants were engaged in protected activity and Bucur cannot demonstrate the probability of prevailing, we affirm the order granting the motions to strike and the judgment.

II

FACTUAL AND PROCEDURAL BACKGROUND

Bucur, representing himself in propria persona, is held to the same standards as an attorney. (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543; *Evans v. Centerstone Development Co.* (2005) 134 Cal.App.4th 151, 166.) There are significant shortcomings in Bucur's appellate brief. An appellant has a duty to summarize the facts fairly in light of the judgment—something Bucur has not done. (*Ajaxo Inc. v. E*Trade Group Inc.* (2005) 135 Cal.App.4th 21, 50; *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) Nevertheless, we have independently reviewed the record and summarized the pertinent facts. Some information is derived from two previous appeals,

¹ We grant the request for judicial notice filed on November 30, 2015.

² All further statutory references are to the Code of Civil Procedure unless stated otherwise.

Bucur v. Ujkaj, E060451 (the *Ujkaj* appeal) and *Bucur v Vithlani*, E063738 (the *Vithlani* appeal).

A. *The Former Actions*

This instant litigation has its genesis in a dispute between Bucur and defendant Chuck Wasarhelyi about who has the ownership of two commercial hauling contracts with FedEx. As previously described in the *Ujkaj* and *Vithlani* appeals, Wasarhelyi prevailed over Bucur and his two companies, Liguari and VLB Associates Inc. (VLB), in 2011 in the *Wasarhelyi* action, case No. RIC1106033. In April 2013, a jury returned a special verdict in favor of Wasarhelyi.

In the meantime, between January 2012 and January 2015, Bucur brought six different actions against Wasarhelyi, and his wife, defendant Eva Kulczycki, and defendant Albert Galimidi, and others, filed in Riverside and San Bernardino counties. Respondent's brief summarizes the convoluted history of the six other lawsuits.³ The first suit was a cross-complaint in the *Wasarhelyi* case. The second suit was by Bucur against FedEx and Wasarhelyi. The third suit was by Bucur against Wasarhelyi and his lawyer, Dilip Vithlani. In the fourth suit, Bucur identified Wasarhelyi without naming him as a defendant. The fifth suit was by Bucur against Wasarhelyi and Kulczycki. The sixth suit was by Bucur and Dumitru Suvagau against Galimidi and Vithlani.

³ We hold the trial court did not abuse its discretion in taking judicial notice of the six previous cases filed by Bucur. The details of those previous lawsuits are relevant to the trial court's ruling granting the anti-SLAPP motions.

B. The Present Complaint and the Motion to Strike

In March 2015, Bucur filed a seventh complaint—this time for the unlawful practice of law—against defendant Albert Galimidi, doing business as Adversary Protection. Bucur also alleged that Wasarhelyi and Kulczycki had aided and abetted Galimidi by employing him to represent them in other litigation with Bucur.

Defendant Galimidi, represented by Vithlani, filed a motion to strike the complaint. The motion asserts Bucur cannot show the probability of prevailing because defendants' conduct was privileged and there is no private right of action for the unlawful practice of law. In support of the motion, Galimidi submitted a declaration stating that he has a law degree but is not licensed to practice law. Galimidi had provided paralegal services, including typing, to Wasarhelyi and Kulczycki in their litigation with Bucur. Wasarhelyi and Kulczycki also submitted declarations stating that Galimidi had helped them prepare documents but he did not advise or represent them as a lawyer. Wasarhelyi and Kulczycki filed a second motion to strike, copying Galimidi's motion.

Bucur opposed Galimidi's motion, submitting a declaration asserting that Galimidi had held himself out as a licensed attorney and that Bucur had once retained his services (apparently to file a bankruptcy petition). Furthermore, Bucur claimed "Galimidi was never admitted to practice law in the State of California" and "would purposely inform his clients/customers that he graduated from law school" and "received a Juris Doctor diploma, [implying] that this diploma authorized him to practice law in the State of California." Bucur included another declaration by Dumitru Suvagau, claiming Galimidi

had misrepresented himself as a licensed lawyer. Bucur did not file opposition to Wasarhelyi and Kulczycki's motion to strike.

Bucur also filed an amendment, naming Vithlani and his law offices as Doe defendants but they were not expressly made parties to defendants' motions to strike. After a hearing, the lower court granted defendants' motions. The lower court dismissed the entire complaint without leave to amend because the court found that Bucur could not state a viable claim against defendants. Bucur appeals.

III

DISCUSSION

We conduct an independent review of the trial court's ruling on an anti-SLAPP motion. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.) By its terms, the anti-SLAPP Statute applies to any cause of action against a defendant "arising from any act of that person in furtherance of the person's right of petition or free speech" (§ 425.16, subd. (b)(1).) A claim affecting the exercise of these rights is subject to a special motion to strike unless the court determines there is a probability that the complainant will prevail on the claims. (§ 425.16, subd. (b).) The anti-SLAPP statute protects against the use of the judicial system to chill the constitutionally-protected right to make statements or writings before judicial or other official proceedings, and in connection with an issue under consideration or review by a judicial body or other legally authorized official proceeding. (§ 425.16, subd. (e).)

The anti-SLAPP statute “posits . . . a two-step process for determining whether an action is a SLAPP.” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) In the first step, the court decides whether the subject action arises from rights as defined in section 425.16, subdivision (c). (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 61; *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 733.) Thereafter, the burden shifts to Bucur, the opposing party, to establish a “probability” that he will prevail. (§ 425.16, subd. (b); *Equilon*, at p. 61.) Bucur must demonstrate that his claim is supported by a sufficient prima facie showing of facts to sustain a favorable judgment. (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2006) 136 Cal.App.4th 464, 476; *Chavez v. Mendoza* (2001) 94 Cal.App.4th 1083, 1087.) Put another way, Bucur must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by him is credited. (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821.)

Bucur made four arguments below: (1) that Galimidi failed to make the threshold showing that Galimidi’s conduct was protected; (2) that Bucur’s claim for unlawful practice of law did not arise from any act of defendants in furtherance of their rights of petition or free speech; (3) that the underlying complaint was filed solely for the benefit of the general public; (4) and finally, that Bucur had demonstrated probability of prevailing. On appeal, Bucur reiterates that Galimidi’s conduct was illegal as a matter of law and that defendants’ conduct was not protected. We reject all of Bucur’s claims.

A. Protected Conduct

On the first prong of the two-part test, in determining whether the anti-SLAPP statute applies, we analyze whether a defendant's acts underlying the plaintiff's cause of action were in furtherance of defendant's right of petition or free speech. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.) The focus is on the principal thrust or gravamen of the causes of action, i.e., the allegedly wrongful and injury-producing conduct that provides the foundation for the claims. (*Club Members for an Honest Election v. Sierra Club* (2008) 45 Cal.4th 309, 319; *Renewable Resources Coalition, Inc. v. Pebble Mines Corp.* (2013) 218 Cal.App.4th 384, 396.)

As set forth in Bucur's complaint, his grievance against Galimidi is that Galimidi pretended to be a lawyer and assisted Wasarhelyi and Kulczycki in litigation with Bucur. Specifically, Galimidi helped Wasarhelyi and Kulczycki prepare summary judgment motions and respond to discovery. Based on Bucur's own allegations therefore, defendants' alleged conduct, as a matter of law, occurred "in connection with an issue under consideration or review by a . . . judicial body" (Code Civ. Proc., § 425.16, subdivision (e); *Navellier v. Sletten, supra*, 29 Cal.4th at p. 90), and thus deserves protection under section 425.16. To the extent defendants' conduct was related to the litigation between Bucur and Wasahelyi and Kulczycki, their conduct was unquestionably protected as the constitutionally-protected right to make statements or writings before judicial proceedings in connection with an issue under review by a judicial body. (§ 425.16, subd. (e).)

Furthermore, such litigation-related writings are “‘absolutely immune from tort liability’ by the litigation privilege (*Rubin v. Green* (1993) 4 Cal.4th 1187, 1193.)” (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1057.) The litigation privilege, as codified in Civil Code section 47 (section 47), applies to a privileged publication or broadcast made in any judicial proceeding. (*Rusheen*, at p. 1057.)

The SLAPP statute also applies when a party to a lawsuit engages in a course of oppressive litigation conduct designed to discourage the opponents’ right to use the courts to seek legal redress: “We hold that in making that determination, the trial court may properly consider the litigation history between the parties. The legislative rationale in enacting the statute is consistent with such an analysis because acts which are designed to discourage the bringing of a lawsuit are no more oppressive than acts which seek to prolong the litigation to a point where it is economically impracticable to maintain and pursue it to a final conclusion. When one party to a lawsuit continuously and unsuccessfully uses the litigation process to bludgeon the opponent into submission, those actions must be closely scrutinized for constitutional implications.” (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 648-649.) This seventh lawsuit is yet another effort by Bucur to bludgeon defendants into submission. For that reason, defendants also should be protected by the SLAPP statute from repetitive litigation as instituted by Bucur over the last several years.

B. Probability of Prevailing

As for the probability of prevailing, the second prong of the SLAPP analysis, an opposing party is “required both to plead claims that were legally sufficient, and to make a prima facie showing, by admissible evidence, of facts that would merit a favorable judgment on those claims, assuming plaintiff’s evidence were credited.” (*1-800 Contacts, Inc. v. Steinberg* (2003) 107 Cal.App.4th 568, 584; *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1122-1123.) “An anti-SLAPP motion is an evidentiary motion. Once the court reaches the second prong of the analysis, it must rely on admissible evidence, not merely allegations in the complaint or conclusory statements by counsel.” (*Finton Construction, Inc. v. Bidna & Keys, APLC* (2015) 238 Cal.App.4th 200, 213.) Accordingly, in opposing an anti-SLAPP motion, Bucur must produce evidence that would be admissible at trial. (*HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 212.)

Bucur failed to submit relevant, credible, and material evidence in opposing defendants’ motions to strike. His declaration and the declaration by Suvagau make only conclusory assertions that Galimidi was practicing law without a license. Furthermore, Bucur’s contention that Galimidi misrepresented himself as a lawyer undermines his allegations against Wasarhelyi and Kulczycki that they aided and abetted Bucur’s misrepresentations by hiring Galimidi as a lawyer.

Bucur also argues that he has brought this complaint “solely” in the public interest; and that he is seeking injunctive relief “solely in the public interest.” (§

425.17, subd. b.)⁴ “Use of the term ‘solely’ expressly conveys the Legislative intent that section 425.17(b) not apply to an action that seeks a more narrow advantage for a particular plaintiff. Such an action would not be brought ‘solely’ in the public’s interest. The statutory language of 425.17(b) is unambiguous and bars a litigant seeking ‘any’ personal relief from relying on the section 425.17(b) exception.” (*Club Members For an Honest Election v. Sierra Club*, *supra*, 45 Cal.4th at pp. 316-317.)

Here the allegations of the complaint do not involve public interest. Instead, the allegations wholly concern the litigation between Bucur, Wasarhelyi, and Kulczycki, and Bucur’s claim that he was damaged, suffering “stress, severe headaches, severe stomachaches, vomiting, insomnia, loss of appetite, loss of sleep, anxiety, and chest pain.” Because Bucur was seeking relief solely for himself, section 425.17 is inapplicable.

Furthermore, to the extent Bucur tries to rely on the Business and Profession Codes, he fails to cite any authority for the proposition that the statutes give rise to a private right of action. (See *Associated Builders & Contractors, Inc. v. San Francisco*

⁴ “Section 425.16 does not apply to any action brought solely in the public interest or on behalf of the general public if all of the following conditions exist: [¶] (1) The plaintiff does not seek any relief greater than or different from the relief sought for the general public or a class of which the plaintiff is a member. . . . [¶] (2) The action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons. [¶] Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff’s stake in the matter.” (§ 425.17, subd. (b).)

Airports Com. (1999) 21 Cal.4th 352, 379-380.) As a general rule, “[i]f the Legislature intended a private right of action, that usually ends the inquiry. If the Legislature intended there be no private right of action, that usually ends the inquiry. If we determine the Legislature expressed no intent on the matter either way, directly or impliedly, there is no private right of action . . . , with the possible exception that compelling reasons of public policy might require judicial recognition of such a right.” (*Animal Legal Defense Fund v. Mendes* (2008) 160 Cal.App.4th 136, 142.) Business and Professions Code section 6125 states: “No person shall practice law in California unless the person is an active member of the State Bar.” The statute does not create any private cause of action: “Nothing in the language of the statute or its legislative history suggests that a private cause of action is authorized under its terms.” (76 Ops.Cal.Atty.Gen. 193, p. 1 (1993).) Similarly, there is no private right of action under Business and Professions Code section 16240, making it unlawful to practice a business without a license where one is required.

Bucur also fails to explain how he can state any viable claim under other Business and Professions Code sections: section 6126 [unauthorized advertising]; section 6127 [contempt of court]; section 6128 [deceit or collusion]; section 6157 [false advertising]; sections 6400, 6402, and 6405 [definitions, registration requirements, and bonds for legal assistants]; section 6410 [contracts with legal assistants]; section 6411 [unlawful acts by legal assistants]; and sections 6450 and 6455 [paralegals]. Indeed, if any party is entitled to relief, it is Wasarhelyi and Kulczycki, not Bucur. Consequently, Bucur could not have prevailed for the alleged violations of any of the Business and Professions Code.

C. Other Arguments on Appeal

We decline to consider Bucur or defendants' arguments regarding Vithlani and his law firm. Although Vithlani and his law firm were named as Doe defendants by amendment, they were not named parties to the motion to strike. Hence, they are also not parties to the appeal. "Generally, issues raised for the first time on appeal which were not litigated in the trial court are waived." (*Newton v. Clemons* (2003) 110 Cal.App.4th 1, 10.) "Failure to raise specific challenges in the trial court forfeits the claim on appeal. "[I]t is fundamental that a reviewing court will ordinarily not consider 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.] "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.]' [Citation.]" (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 564.)

We also decline Bucur's request for leave to amend. Once the trial court has determined the speech at issue is constitutionally protected, it may not grant leave to amend to omit facts to take the claim out of the protection of section 425.16. (*Simmons v. Allstate Ins. Co.* (2001) 92 Cal.App.4th 1068, 1073.)

IV

DISPOSITION

We affirm the judgment. In light of our conclusions, we need not discuss any additional issues raised by Bucur or defendants. Defendants as the prevailing parties are entitled to recover their costs and attorney's fees on appeal. (*Lucky United Properties Investment, Inc. v. Lee* (2010) 185 Cal.App.4th 125, 138-139.)

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CODRINGTON
J.

We concur:

RAMIREZ
P. J.

HOLLENHORST
J.