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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

LARRY J. HUDACK, Plaintiff and Appellant, v. LA CRESTA PROPERTY OWNERS ASSOCIATION et al., Defendants and Respondents.	E070144 (Super.Ct.No. RIC1724414) OPINION

APPEAL from the Superior Court of Riverside County. Randall S. Stamen, Judge. Affirmed in part; reversed in part.

Larry J. Hudack, in pro. per., for Plaintiff and Appellant.

Whitney & Michael and Constance Trinh for Defendant and Respondent LaCresta Property Owners Association.

Gregory P. Priamos, County Counsel, James E. Brown and Bruce G. Fordon, Deputy County Counsel, for Defendant and Respondent County of Riverside.

Larry Hudack (Hudack) brought an action against the County of Riverside (the County), the La Cresta Property Owners Association (the Association), Wayne Siggard (Siggard), and others (1) to set aside a prior judgment, and (2) for equitable relief. The County and the Association filed anti-SLAPP motions. (Code Civ. Proc., § 425.16.)[1] The trial court granted the two anti-SLAPP motions and entered judgments of dismissal.

Hudack raises four arguments on appeal: (1) the trial court lacked authority to consider an anti-SLAPP motion. (2) the trial court's order lacks legal precedent; (3) the trial court misunderstood the law; and (4) the trial court failed to follow legal procedures. We reverse in part and affirm in part.

FACTUAL AND PROCEDURAL HISTORY

A. PLEADING

1. *COMPLAINT*

Hudack initiated the trial court action by filing a document captioned "Independent Action in Equity to Set Aside Judgments From RIC450529 and for Equitable Relief." (All caps and boldface omitted.) In the first sentence of the document, Hudack wrote, "This is a collateral attack on void judgments from Riverside County case RIC450529." We understand Hudack's pleading to be a complaint in equity. Accordingly, we will refer to the document as "the complaint."

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

2. *UNDERLYING LAWSUIT*

"In May 2006, Siggard owned a ten-acre vacant parcel of land adjacent to [Hudack's] property." Siggard's property was within the Association's boundaries. Hudack and Marianne S. Hudack (Wife) sued Siggard for grading that Siggard performed. Hudack alleged the grading harmed Hudack's property and that it was illegally performed. Hudack sued the County for allegedly failing to comply with the California Environmental Quality Act (CEQA). Hudack sued the Association for failing to enforce its covenants, conditions, and restrictions (CC&Rs) that prohibited Siggard's grading.

3. *ALLEGATIONS AGAINST THE ASSOCIATION*

In the complaint in the instant case, Hudack alleged that in the prior lawsuit, the Association "grossly misrepresented [Hudack's] breach of fiduciary duty claims and a ruling made by Judge Schwartz. The [Association] fraudulently described the fiduciary duty claims as being directed at insurance, vehicle control, and providing documents to new property owners." The Association's "misrepresentation resulted in the [trial court] striking [Hudack's] Seventh Cause of [A]ction of breach of fiduciary duty against the [Association]."

Also in the complaint in the instant case, Hudack alleged that in the prior lawsuit the Association fraudulently asserted it was entitled to attorney's fees. Hudack asserted the Association was not entitled to attorney's fees because the Association lacked a common area and therefore has no legal basis to claim attorney's fees as a common interest development. Because the Association "fraudulently asserted a right to legal

fees and by virtue of their extrinsic fraud the award of fees is void." On February 14, 2014, Hudack stipulated to pay the Association $80,294.17 and to pay the Association's attorney $817,840.82. Hudack asserted he is entitled to the return of $898,134.99.

4. *ALLEGATIONS AGAINST THE COUNTY*

In the prior lawsuit, Hudack prevailed on his CEQA cause of action against the County. In the current complaint, Hudack alleged the County opposed an award of legal fees to Hudack "based on fraudulent claims that 'The Hudacks and Siggard and neighbors each owning contiguous ten acre lots valued at over $2,000,000. [The County] knew and was in possession of county records that demonstrated that the former Siggard parcel was sold at a price of $150,000 and that [Hudack's] adjoining parcel was purchased for $150,000. [¶] [The County], by making fraudulent misrepresentations, was shifting the proportionality balance to create the appearance that the legal fees requested were trivial. [The County] also knew that the entire CEQA cause of action could have been avoided entirely if [the] County had simply agreed to comply with CEQA and perform that act they were eventually ordered to perform—vacate Siggard's exemption."

5. *ALLEGATIONS CONCERNING JURISDICTION*

Judge Dallas Holmes retired in 2008. In 2010, Judge Holmes presided over the prior case of *Hudack v. Siggard* (Super. Ct. Riverside County, case No. RIC450529), which also included the County and the Association. In the current complaint, Hudack alleged, "Judge Holmes was an inactive member of the State Bar not qualified to serve

as a temporary judge. [¶] Holmes did not disclose to the parties that he was appointed as a temporary judge and [Hudack] did not stipulate to his presiding."

Hudack alleged the judgment in the underlying case was facially void because (1) Judge Holmes was not a judge or an active member of the California State Bar; (2) Judge Holmes did not disclose that he was a retired judge; and (3) Hudack did not stipulate to Judge Holmes presiding over the case.

Hudack asserted "Holmes' daughter-in-law was a partner in his prior firm [citation], that regularly represented [the County], also a defendant in the underlying case. That gave the appearance of a possible conflict of interest." Hudack's attorney in the underlying case challenged Judge Holmes for cause, but Judge Holmes interrupted the attorney and declined to recuse himself. Hudack alleged that the issue of Judge Holmes's disqualification should have been heard by a second judge. (§ 170.3, subd. (c).)

6. *PRAYER FOR RELIEF*

In the instant case, Hudack requested the trial court "find the judgments and verdicts in RIC450529 are void." Hudack further requested that the Association and its attorney be required to pay Hudack $898,134.99 plus interest, and that the County be ordered to pay the legal fees associated with the CEQA cause of action from the prior lawsuit, which Hudack had previously demanded.

B. MOTIONS AND HEARING

The County and the Association filed anti-SLAPP motions. (§ 425.16.) The County's anti-SLAPP motion is not included in the record on appeal. Hudack opposed the motions, but his oppositions are not included in the record on appeal.

On March 6, 2018, the trial court held a hearing concerning the Association's anti-SLAPP motion. At the hearing, Hudack argued, "I filed a collateral attack on void judgments for alleging the judgments in the underlying case were void." Hudack continued, "This Court has only one question to answer, and that is: Are the judgments in the underlying case void[?] The procedure is well established by law for you to make that decision."

Hudack concluded, "At any event, my complaint is not a SLAPP suit. A SLAPP suit is an action in law seeking compensation or damages. Mine is an action in equity asking the Court to set aside [the]void judgments, and asking the Court to grant equitable relief."

The Association argued that Hudack brought a lawsuit based upon conduct that "stems entirely from statements and arguments made by [the Association] during court proceedings, and such litigation-related speech is expressly protected by the anti-SLAPP statute as protected activity."

The trial court found the complaint alleged conduct that was protected by the anti-SLAPP statute because the complaint concerned the Association's conduct in the prior lawsuit. (§ 425.16, subd. (e)(1).) The trial court found Hudack failed to demonstrate a likelihood of prevailing on the complaint because Hudack did not present

any admissible evidence. (§ 425.16, subd. (b)(1).) The trial court granted the Association's anti-SLAPP motion.

On March 27, the trial court held a hearing on the County's anti-SLAPP motion. A reporter's transcript of the hearing is not included in the record on appeal. The trial court granted the County's anti-SLAPP motion. (§ 425.16.) The judgment of dismissal related to the County reflects Hudack failed to provide any admissible evidence to demonstrate a probability of prevailing.

DISCUSSION

A. LAW AND STANDARD OF REVIEW

"The anti-SLAPP statute does not insulate defendants from *any* liability for claims arising from the protected rights of petition or speech. It only provides a procedure for weeding out, at an early stage, *meritless* claims arising from protected activity. Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. [Citation.] 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. [Our high court has] described this second step as a 'summary-judgment-like procedure.' " (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384-385 (*Baral*).) We apply the de novo standard of review. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325.)

B. TWO TYPES OF COLLATERAL ATTACK

"A judgment of a court of general jurisdiction can only be set aside on collateral attack if the judgment is void on the face of the record. [Citation.] A judgment is void

on its face when the invalidity appears on the judgment roll." (*F.E.V. v. City of Anaheim* (2017) 15 Cal.App.5th 462, 471 (*F.E.V.*).) The judgment roll included items such as the pleadings and jury verdict. (§ 670, subd. (b).)

"In limited situations, a party may seek equitable relief from a final judgment that is not void on its face. To obtain equitable relief from a judgment, a party must prove the judgment was the product of extrinsic fraud, meaning ' "a party has been denied by his opponent or otherwise an opportunity to be heard or to fully present a claim or defense." ' " (*F.E.V.*, *supra*, 15 Cal.App.5th at p. 471.)

C. PROTECTED ACTIVITY

We examine whether the complaint concerns a protected activity. A protected activity includes "any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law." (§ 425.16, subd. (e)(1).)

1. *EQUITY: THE ASSOCIATION*

In the complaint, Hudack alleged the Association "fraudulently described the fiduciary duty claims" to the trial court during the prior case, which resulted in the trial court striking Hudack's breach of fiduciary duty cause of action in the underlying case. Hudack further alleged the Association "fraudulently asserted the [Association] was entitled to legal fees.

Hudack's allegations against the Association concerned the Association's statements to the court in the prior case. Thus, the allegations involved statements made

during a judicial proceeding. As a result, Hudack's allegations against the Association concern a protected activity. (§ 425.16, subd. (e)(1).)

2. *EQUITY: THE COUNTY*

In the complaint, Hudack alleged the "County's opposition to CEQA legal fees was based on fraudulent claims." Hudack's allegations concerned statements made to the court during the prior case. Therefore, the allegations involve statements made during a judicial proceeding. As a result, Hudack's allegations against the County concern a protected activity. (§ 425.16, subd. (e)(1).)

3. *JURISDICTIONAL DEFECTS*

In the complaint, Hudack alleged various jurisdictional defects mostly relating to Judge Holmes being a retired jurist and having an alleged conflict of interest. Those allegations do not involve activities by the County or the Association. Rather, they involve activities by the trial court. Nevertheless, the County and the Association would presumably want to defend against those allegations in order to protect their judgment in the underlying case. (See *Save Our Bay, Inc. v. San Diego Unified Port Dist.* (1996) 42 Cal.App.4th 686, 692-693 [" 'A person is an indispensable party if his or her rights must necessarily be affected by the judgment' "]; § 389.)

Because the jurisdictional allegations pertain to the trial court's activities, they are not targeted at the Association's or the County's free speech or petitioning rights. Therefore, the trial court erred by concluding the jurisdictional allegations arise from the Association's and the County's free speech or petitioning rights. (§ 425.16, subd. (b)(1).) We will reverse the trial court's striking of the complaint as it pertains to the

alleged jurisdictional defects involving the trial court's activities. (*Baral, supra*, 1 Cal.5th at p. 393 [portion of a complaint may be stricken via an anti-SLAPP motion].)

D. LIKELIHOOD OF PREVAILING

We now turn to the second prong of the anti-SLAPP analysis, which concerns Hudack's likelihood of prevailing on the merits. We focus only on the equity/fraud portion of the complaint due to our conclusion that the jurisdiction piece of the complaint does not concern a protected activity by the Association or the County.

The second-prong is akin to a summary judgment analysis. (*Sweetwater Union High School Dist. v. Gilbane Building Co.* (2019) 6 Cal.5th 931, 940.) " 'The court does not weigh evidence or resolve conflicting factual claims. [Our] inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. [We] accept[] the plaintiff's evidence as true, and evaluate[] the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law. [Citation.] "[C]laims with the requisite minimal merit may proceed." ' " (*Ibid.*)

"The extrinsic/intrinsic fraud rule is a doctrine developed in courts of equity governing the basis for successful collateral attack on a final judgment by way of an independent proceeding. The rule is that fraud internal to the adversary proceeding, such as perjury committed during trial or error or mistake during the trial, is intrinsic and is not a basis for relief; but fraud that prevented the trial of a claim or prevented the defrauded party from getting into court at all, is extrinsic to the proceeding and is a

basis for relief." (*Los Angeles Airways, Inc. v. Hughes Tool Co.* (1979) 95 Cal.App.3d 1, 7.)

Hudack's oppositions to the anti-SLAPP motions are not included in the record. The trial court remarked that Hudack failed to provide admissible evidence in support of his two oppositions. Hudack's complaint is verified. In the complaint, Hudack alleges fraud that occurred during the trial and attorneys' fees hearings in the prior case. Thus, Hudack describes intrinsic fraud because Hudack participated in court proceedings, but fraud allegedly occurred during those proceedings. Hudack has not demonstrated a prima facie case of extrinsic fraud. Therefore, Hudack has not demonstrated a likelihood of prevailing on his equity-based collateral attack. The trial court did not err by granting the anti-SLAPP motions in relation to the equity/fraud assertions against the County and the Association.

E. JURISDICTION

Hudack contends the trial court did not have jurisdiction to consider an anti-SLAPP motion because he was only attacking jurisdictional defects in the prior judgment, thereby limiting the trial court to examining the judgment roll in the underlying case.

As explained *ante*, there is more than one type of collateral attack. One type of collateral attack is jurisdictional, wherein a judgment will be set aside if it appears invalid on the face of the judgment roll. A second type of collateral attack is equitable, wherein a judgment will be set aside if it appears it was the product of extrinsic fraud. (*F.E.V.*, *supra*, 15 Cal.App.5th at p. 471.)

Hudack's claims against the Association and the County are based upon fraud. The complaint is entitled "Independent Action in Equity to Set Aside Judgments From RIC450529 and for Equitable Relief." (All caps and boldface omitted.) The title of the complaint and the substance of the allegations against the Association and the County reflect the complaint was brought in equity and is based upon alleged fraud. Thus, we are not persuaded that the trial court was limited to examining the judgment roll for jurisdictional defects because Hudack did not limit his allegations to the judgment roll.

F. PROCEDURE

Hudack contends the trial court erred by failing to follow legal procedures. Hudack asserts the trial court could not dismiss his collateral attack without first looking at the judgment in the underlying case. It is unclear if Hudack is referring to the jurisdiction section of the complaint or equity/fraud section of the complaint. Because we are reversing the ruling as it pertains to the jurisdiction allegations, we will address the contention with the presumption that it pertains to the equity/fraud allegations.

Hudack's opportunity to have the trial court examine the prior judgment occurred within the second-prong of the anti-SLAPP analysis. During that second step, Hudack should have presented the trial court with evidence of fraud as it pertained to the prior judgment. Hudack's oppositions to the anti-SLAPP motions are not included in the record on appeal. The trial court remarked that Hudack did not present admissible evidence in opposition to the Association's and the County's anti-SLAPP motions. Thus, Hudack had opportunities to have the trial court look at the judgment in the prior case, but it appears he failed to seize those opportunities.

G. UNDERSTANDING THE LAW

Hudack contends the trial court erred because it failed to understand the law. Hudack asserts, "A collateral attack on void judgments is not an action in torts seeking damages . . . . A court considering a collateral attack is not required to assign blame or point an accusing finger when confirming void judgments."

A case on point is *Church of Scientology v. Willersheim* (1996) 42 Cal.App.4th 628 (*Church of Scientology*) (disapproved on other grounds in *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5). In *Church of Scientology*, the Church brought a "complaint attack[ing] the judgment Wollersheim had obtained against the Church in a prior action." (*Id.* at p. 636.) Wollersheim brought an anti-SLAPP motion, and the trial court granted the motion. On appeal, the Church asserted the trial court erred because "its action against Wollersheim is not a SLAPP suit." (*Ibid.*)

Specifically, the church argued it was attacking the judgment, not Wollersheim, and therefore the Church's claims did "not 'arise' from any act in furtherance of Wollersheim's right of petition or free speech." (*Church of Scientology*, *supra*, 42 Cal.App.4th at p. 648.) The appellate court concluded "[t]he Church's approach to the interpretation of section 425.16 is too restrictive." (*Ibid.*) The appellate court explained that the anti-SLAPP statute applies "to any direct attack on the judgment in the prior action, which resulted from Wollersheim's petition activity." (*Ibid.*, italics omitted.)

In the instant case, Hudack is asserting that he is attacking a judgment, not the Association and the County, and therefore the trial court erred by applying the anti-

SLAPP law. *Church of Scientology* is an on-point case explaining why Hudack's argument is incorrect. Hudack is attacking the judgment by asserting the Association and the County lied in the underlying case. Therefore, Hudack is attacking the Association's and the County's petitioning activity and free speech by asserting they made fraudulent statements—he is not merely attacking a judgment. As a result, we find Hudack's argument to be unpersuasive.

Hudack contends the trial court did not follow the law because the trial court concluded the underlying judgments were final and therefore valid. In granting the Association's anti-SLAPP motion, the trial court wrote, "[Hudack] fails to meet his burden on the second prong of the analysis. [Hudack] presents no admissible evidence or argument that he has a reasonable probability of prevailing on his contention that the Judgment in *Hudack v. Siggard, et al.*, is void despite the finality of the judgment in that matter, after an appeal."

The trial court did not conclude that the judgment was valid because it was final. The trial court explained that Hudack (1) failed to present evidence to demonstrate a probability of prevailing; and (2) failed to provide an argument to support his position that the judgment was void despite it being final.

H. <u>LACK OF PRECEDENT</u>

Hudack contends the trial court's rulings are without precedent. Hudack asserts he could find no cases wherein "a collateral attack on void judgments is a SLAPP suit." As set forth *ante*, *Church of Scientology* is a case wherein an anti-SLAPP motion was granted against a complaint that was seeking to have a prior judgment set aside.

(*Church of Scientology*, *supra*, 42 Cal.App.4th at p. 648.) Thus, there is precedent for an anti-SLAPP motion being granted against a complaint that seeks to have a prior judgment set aside.

Hudack asserts that if a collateral attack can be subject to an anti-SLAPP motion then "there could never be a collateral attack on void judgments and a vast body of decisional law would have to be scrapped." The anti-SLAPP statute only weeds out meritless claims. (*Baral*, *supra*, 1 Cal.5th at p. 384.) If a party has a meritorious collateral attack, then the anti-SLAPP statute would not cause the case to be dismissed. In other words, meritorious collateral attacks could proceed despite the anti-SLAPP statute. Therefore, we are not persuaded that the anti-SLAPP statute will cause the cessation of all collateral attacks.

DISPOSITION

The judgments are reversed in relation to the portion of the complaint that asserts jurisdictional defects in the underlying judgment. In all other respects, the judgments are affirmed. The parties are to bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(3).)

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MILLER
J.

We concur:

RAMIREZ
P. J.

CODRINGTON
J.