

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MICHAEL B. RAHAVI,

Cross-defendant and Appellant,

v.

NEWPORT CAPITAL RECOVERY  
GROUP II, LLC et al.,

Cross-complainants and Respondents.

G045582

(Super. Ct. No. 30-2011-00459379)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Thierry Patrick Colaw, Judge. Affirmed.

Law Offices of Stephen Abraham and Stephen E. Abraham for  
Cross-defendant and Appellant.

Lerner & McDonald, Mark G. Lerner and John C. Scholz for  
Cross-complainants and Respondents.

Michael B. Rahavi (Rahavi) appeals from an order denying his special motion to strike<sup>1</sup> Newport Capital Recovery Group II, LLC (Newport Capital II) and Kenneth Honig's (Honig) cross-complaint. Rahavi argues the trial court erred in denying his special motion to strike and erred in awarding attorney fees to Honig. Neither contention has merit, and we affirm the order denying Rahavi's special motion to strike.

#### FACTS

In January 2007, Honig met Rahavi while conducting business at Rahavi's employer, Wells Fargo bank. The two men developed a business relationship.

In his opening brief, Rahavi claims he formed Newport Capital Recovery Group LLC (Newport Capital I) in June 2008. Rahavi does not cite to any place in the record to support this assertion; Newport Capital II and Honig do not dispute it.

On January 23, 2009, articles of organization for Newport Capital II were filed with the California Secretary of State. The articles of organization list Rahavi as the agent for service of process and management of the company was vested in one manager. Newport Capital II's mission was to purchase debt portfolios from financial institutions, hold those portfolios, and pursue collections on those debts. Honig invested \$50,000 in Newport Capital II to purchase debt portfolios. There was no operating/ownership agreement prepared for Newport Capital II.

In his verified complaint and declaration, Rahavi asserted he discussed with Honig the possibility of Honig investing in a newly created entity (Newport Capital II) through which Rahavi was already engaged in the business (using Newport Capital I) of purchasing debt portfolios. Rahavi alleged a statement of information listing Rahavi as

---

<sup>1</sup> Code of Civil Procedure section 425.16 authorizes a special motion to strike a Strategic Lawsuit Against Public Participation (SLAPP) action, and is referred to as the anti-SLAPP statute. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 85, fn. 1 (*Navellier*).) All further statutory references are to the Code of Civil Procedure, unless otherwise indicated.

the chief executive officer and his address as the principal executive office was filed with the California Secretary of State. In his declaration, Rahavi avers he owns 25 percent and Honig owns 75 percent of Newport Capital II, respectively.

In his cross-complaint and declaration, Honig alleged it was his idea to form the company. Honig explained that because he was impressed with young Rahavi's business acumen and initiative, Honig would provide Rahavi with a paid consulting position where Rahavi could research debt portfolios to obtain. Honig stated that for various reasons (his and his family's security and because he traveled for business), he asked Rahavi to be the manager and agent for service of process for Newport Capital II. Honig alleged he owned a 100 percent interest in Newport Capital II and Rahavi understood this. Honig claimed he was the sole owner and financier of Newport Capital II. He explained he opened a bank account at Wells Fargo, which listed Honig as the sole owner and signatory. The basis of the cross-complaint was Rahavi improperly tried to establish ownership in Newport Capital II, he forged the bank card to add himself as a signatory, pursued debt portfolios with his father, Behzad Rahavi (Behzad), without first offering the opportunity to Newport Capital II, and made malicious and false claims to collection agencies with whom Newport Capital II was doing business.

On March 9, 2011, Honig gave Rahavi written notice he was removed as chief executive officer and manager of Newport Capital II and terminated as a consultant. About one week later, Rahavi filed a complaint against Newport Capital II alleging the following causes of action: (1) involuntary dissolution of a limited liability company; (2) accounting; and (3) temporary restraining order, preliminary and permanent injunction, and damages. The basis of the complaint was Honig claimed he owned 100 percent of Newport Capital II, and Honig was withdrawing "large sums of money" that at times prevented Newport Capital II from paying its obligations.

Newport Capital II and Honig filed a cross-complaint against Rahavi and Behzad alleging the following causes of action: (1) fraud; (2) breach of confidence;

(3) breach of contract; (4) breach of the implied covenant of good faith and fair dealing; (5) breach of fiduciary duty; (6) slander of title; (7) fraud; (8) conspiracy to commit breach of fiduciary duty; (9) interference with contractual relationships; (10) interference with prospective economic advantage; (11) unfair business practices; (12) accounting; and (13) racketeering.

Rahavi filed a special motion to strike supported by declarations from himself and Stephen Abraham. Newport Capital II opposed the special motion to strike supported by declarations from Honig, David Eliason, Reza Ray Bayat, and Mark Lerner. Newport Capital II also filed evidentiary objections to Rahavi's declarations. Rahavi replied to Newport Capital II's opposition and filed his own objections to Honig's declaration. Rahavi also responded to Newport Capital II's evidentiary objections.

At the hearing on the special motion to strike, the trial court read its tentative statement of decision denying Rahavi's special motion to strike relying on *Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181 (*Martinez*). The court commented, "And I think your client is fortunate that sanctions requested are only what they are, because if we go all around Robin's barn further the price is going to go up." After addressing sanctions, Rahavi's counsel stated it was "only going to pick a couple sections." Rahavi's counsel invited the court's attention to the sixth (paragraphs 80 & 81), ninth (paragraph 105), and tenth (paragraph 114) causes of action and asserted these causes of action do not relate to any financial transaction. Honig's counsel agreed with the trial court's tentative decision and argued this was simply a business dispute. The court made its tentative ruling its final ruling.

The trial court issued an order denying Rahavi's special motion to strike Newport Capital II's cross-complaint. The court explained: "2. The gravamen of the [c]ross-[c]omplaint arises from the issue of whether [c]ross-[d]efendant used his managerial capacity to fraudulently claim an ownership interest in the company. . . . In addition, the [c]ross-[c]omplaint alleges that [c]ross-[d]efendant breached his oral

contract and fiduciary duties by taking away corporate opportunities by purchasing debt portfolios without presenting them first to [c]ross-[c]omplainant. . . . ¶] 3. That [c]ross-[d]efendant purportedly contacted collection agencies (who are acting as agents of the company) and informed them that there was a dispute regarding the ownership of the company and to refrain from making any disbursements to the company until the issue has been resolved . . . is merely incidental to the dispute between the parties.

¶] 4. Attorney fees and costs are awarded to [r]esponding [p]arty [[c]ross-[c]omplainants] in the amount of \$3,300.00. The award of attorney fees and costs against [c]ross-[d]efendant is stayed pending any appeal.” Rahavi timely appealed.

## DISCUSSION

### A. *General Principles*

Section 425.16, subdivision (b)(1), states, “A cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States Constitution or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.” Section 425.16 is to be “construed broadly.” (§ 425.16, subd. (a).)

“[S]ection 425.16 requires that a court engage in a two-step process when determining whether a defendant’s anti-SLAPP motion should be granted. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one “arising from” protected activity. [Citation.] If the court finds such a showing has been made, it then must consider whether the plaintiff has demonstrated a probability of prevailing on the claim.’ [Citation.]” (*Episcopal Church Cases* (2009) 45 Cal.4th 467, 477 (*Episcopal Church*).) We review a trial court’s ruling on a special motion to strike de novo. (*Baharian-Mehr v. Smith* (2010) 189 Cal.App.4th 265, 270 (*Baharian-Mehr*).)

## *B. Protected Activity*

“[T]he statutory phrase ‘cause of action . . . arising from’ means simply that the defendant’s act underlying the plaintiff’s cause of action must *itself* have been an act in furtherance of the right of petition or free speech. [Citation.] [T]he critical point is whether the plaintiff’s cause of action itself was *based on* an act in furtherance of the defendant’s right of petition or free speech. [Citations.] ‘A defendant meets this burden by demonstrating that the act underlying the plaintiff’s cause fits one of the categories spelled out in section 425.16, subdivision (e) . . . .’ [Citations.]” (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.)

Section 425.16, subdivision (e), states: “As used in this section, ‘act in furtherance of a person’s right of petition or free speech under the United States or California Constitution in connection with a public issue’ includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.” If the defendant has not made a threshold showing the challenged causes of action arise from protected activity, the trial court need not address the second step and should deny the special motion to strike. (*Baharian-Mehr, supra*, 189 Cal.App.4th at p. 271.)

### *1. Which causes of action did Rahavi move to strike?*

Before we address whether the challenged causes of action arise from protected activity, we must first determine which causes of action Rahavi moved to strike. In his special motion to strike, Rahavi moved to strike “all or . . . portions of the

cross-complaint.” In the motion, Rahavi contended Newport Capital II and Honig’s cross-complaint relied upon one or more of three factual scenarios: (1) Rahavi had a duty to present all debt portfolio opportunities to Newport Capital II; (2) Rahavi forged a Newport Capital II bank signature card; and (3) Rahavi stated to third parties that he had an ownership interest in Newport Capital II. In his motion, Rahavi identified eight causes of action that directly relate to his privileged communications: (1) fraud; (2) breach of confidence; (4) breach of the implied covenant of good faith and fair dealing; (5) breach of fiduciary duty; (6) slander of title; (9) interference with contractual relationships; (10) interference with prospective economic advantage; and (13) racketeering. He also identified five causes of action that were “infect[ed]” with claims related to privileged communications: (3) breach of contract; (7) fraud; (8) conspiracy to commit breach of fiduciary duty; (11) unfair business practices; and (12) accounting.

At the hearing on the special motion to strike, after the trial court indicated Rahavi was “fortunate that sanctions requested are only what they are, because if we go all around Robin’s barn further the price is going to go up[,]” Rahavi’s counsel briefly addressed the issue of sanctions. When the trial court inquired about the merits of the special motion to strike, Rahavi’s counsel replied, “I’m only going to pick a couple of sections. I would like to draw the court’s attention to the sixth, ninth[,] and tenth causes of action.” After discussing the merits of those causes of action, Rahavi’s counsel stated, “At this point quite frankly I’m dropping the other causes of action, you know. I’m not going to sit on those.”

Throughout his appellate briefs, Rahavi focuses on the sixth, ninth, and tenth causes of action. He does assert, however, “This appeal extends to other claims similarly prohibited under [section] 425.16.” He briefly discusses the first, second, fourth and fifth causes of action as well.<sup>2</sup> He does not discuss the thirteenth cause of action, but

---

<sup>2</sup> Rahavi does not discuss the third, seventh, eighth, eleventh, twelfth, and thirteenth causes of action.

he includes it in a list of causes of action he asserts arise from protected activity.

Although Rahavi abandoned his claim as to the first, second, fourth, fifth, and thirteenth causes of action at the hearing on the motion and they are not therefore preserved for appeal (*Hepner v. Franchise Tax Bd.* (1997) 52 Cal.App.4th 1475, 1486 [right to complain on appeal may be waived if issue not raised in trial court]), we will address his contentions as to those claims because they all arose from communications Rahavi made to third party collection agencies concerning ownership of Newport Capital II (*Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 6 [questions of law not requiring resolution of factual disputes may be raised for first time on appeal]).

2. *Did those causes of action arise from protected activity?*

Two cases are instructive on the issue we face here, *Episcopal Church, supra*, 45 Cal.4th 467, and *Baharian-Mehr, supra*, 189 Cal.App.4th 265, a decision from another panel of this court. In *Episcopal Church, supra*, 45 Cal.4th at pages 475-476, a parish church sought to apply the anti-SLAPP statute to a lawsuit brought by the general church to regain ownership and possession of the local church building. The local church argued the eight property-recovery related causes of action involved protected activity regarding an act in furtherance of free speech on a public issue regarding church governance. (*Id.* at p. 477.) The Supreme Court, while recognizing that protected activity “lurks in the background” of the case (*id.* at p. 478), held that the anti-SLAPP statute did not apply because a property dispute “and not any protected activity, is ‘the gravamen or principal thrust’ of the action[.]” (*id.* at p. 477). The court concluded, “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. Accordingly, the trial court erred in treating this as a SLAPP suit subject to section 425.16’s special motion to dismiss.” (*Id.* at p. 478.)

In *Baharian-Mehr, supra*, 189 Cal.App.4th at page 268, plaintiff and defendants executed a general partnership contract establishing an adult entertainment

business. Two of defendant's family members joined the partnership, and they formed a corporation to conduct the business. After defendant left the partnership, plaintiff inspected a portion of the accounting records and discovered irregularities. (*Id.* at p. 269.) Plaintiff filed suit against defendants alleging causes of action for accounting, preliminary and permanent injunctions, breach of fiduciary duty, constructive fraud, constructive trust, and declaratory relief. The trial court denied defendant's special motion to strike. (*Id.* at p. 270.) The Court of Appeal explained that to determine whether the challenged claims satisfy one of the four categories in section 425.16, subdivision (e), the court must "'examine the *principal thrust* or *gravamen*'" of the cause of action. The court stated: "'We assess the principal thrust by identifying "[t]he allegedly wrongful and injury-producing conduct . . . that provides the foundation for the claim.'" [Citation.]' [Citation.] We keep in mind that '[i]n the anti-SLAPP context, the critical consideration is whether the cause of action *is based* on the defendant's protected free speech or petitioning activity. [Citations.]' [Citation.] If the mention of protected activity is 'only incidental to a cause of action based essentially on nonprotected activity,' then the anti-SLAPP statute does not apply. [Citation.]" (*Id.* at p. 272.) The court opined plaintiff's allegations concerning defendant's hiring an attorney and private investigator for business litigation and the corporation's lawsuit against the former partner "do not constitute the 'overall thrust' of the complaint[.]" The court stated the thrust or gravamen of the complaint was mismanagement and misuse of corporate funds, as evidenced by the two pages of the complaint listing alleged misuses of corporate funds. The court explained the gravamen of plaintiff's complaint is not that plaintiff's petitioning activity harmed him but that defendant's misuse of corporate funds did. The court concluded, "In this instance, the mention of protected activity is 'only incidental' to a business dispute based on nonprotected activity. [Citation.]" (*Id.* at p. 273.)

Here, Rahavi has identified seven causes of action he claims arise from protected activity. In discussing those causes of action, Rahavi cites to paragraphs in

those causes of action he claims support his contentions the causes of action arise from protected activity. Below, we provide the causes of action and corresponding paragraphs.

*First Cause of Action-Fraud*

Paragraph 46 states: “Cross-[c]omplainants allege that in March[] 2011, in furtherance of [Rahavi’s] concealed fraudulent goals of asserting an ownership interest in [Newport Capital II], [Rahavi] . . . conspired to cause false representations to be made to [c]ollection [a]gencies, including PMGI, that [Rahavi] had an ownership interest in [Newport Capital II].”

*Second Cause of Action-Breach of Confidence*

Paragraph 55 provides: “Cross-[c]omplainants allege that the forging of Honig’s name to become a signatory on [Newport Capital II’s] bank account was just one of the overt acts of fraud and deceit performed as part of the overall scheme by [c]ross-[d]efendant[] [Rahavi] . . . to deceive and defraud the [c]ollection [a]gencies and financial institutions into believing [Rahavi] had a ownership interest in [Newport Capital II] to stop the [c]ollection [a]gencies from turning financial proceeds over to [Newport Capital II] and paralyze their collection efforts on behalf of [Newport Capital II] in order to wrestle a financial settlement or to wrest an ownership interest in [Newport Capital II] from [c]ross-[c]omplainants.”

*Fourth Cause of Action-Breach of the Implied Covenant of Good Faith and Fair Dealing*

Paragraph 67 states: “Cross-[c]omplainants . . . allege that [Rahavi] breached his implied covenant of good faith and fair dealing by making demands upon the [c]ollection [a]gencies for the purpose of causing the [c]ollection [a]gencies distributing proceeds to [Newport Capital II] and to stop their collection work on behalf of [Newport Capital II], thereby interfering with [Newport Capital II’s] ability to earn income to interfere with and frustrate [Newport Capital II’s] ability to earn income, and thereby interfere with Honig’s ability to earn proceeds from [Newport Capital II] until a

resolution had been reached between [Rahavi] and [Honig] over [Rahavi's] false and malicious claim of ownership of [Newport Capital II].”

*Fifth Cause of Action-Breach of Fiduciary Duty*

Paragraph 75 provides: “Cross-[c]omplainants allege that [c]ross-[d]efendant[] Rahavi . . . breached [his] fiduciary duties by causing demands to be made upon the [c]ollection [a]gencies to refrain from making any disbursements to [Newport Capital II] until a resolution had been reached between [Rahavi] and Honig over [Rahavi's] false and malicious claim of ownership in [Newport Capital II].”

*Sixth Cause of Action-Slander of Title*

Paragraph 80 states: “Cross-[c]omplainants allege the [c]ross-[d]efendant[] . . . h[as] caused Honig's sole membership/ownership of [Newport Capital II] to be placed in doubt by asserting false verbal, written, and/or forged claims of title and ownership in [Newport Capital II] to the [c]ollection [a]gencies, including PMGI, as well as to Wells Fargo Bank.” Paragraph 81 provides: “Cross-[c]omplainants allege that the false verbal, written and/or forged claims of title and ownership in [Newport Capital II] made through [c]ross-[d]efendants . . . to the [c]ollection [a]gencies, including PMGI, and Wells Fargo, constitutes a publishing.”

*Ninth Cause of Action-Interference with Contractual Relationships*

Paragraph 105 states: “Cross-[c]omplainants allege that [c]ross-[d]efendant[] . . . had knowledge of the contracts between [Newport Capital II] and the [c]ollection [a]gencies, including PMGI, through [Rahavi's] roles and duties with [Newport Capital II] and that [c]ross-[d]efendant[] . . . intended to induce the breach of those contracts by the [c]ollection [a]gencies or making performance more difficult by creating an [sic] claim of dispute between [Rahavi] and Honig over the ownership of [Newport Capital II].”

*Tenth Cause of Action-Interference with Prospective Economic Advantage*

Paragraph 114 provides: “Cross-[c]omplainants allege that the aforementioned actions by [c]ross-[d]efendant[] . . . including, but not limited to, the claims made in March 2011 to the [c]ollection [a]gencies, including PMGI, were done with the intent by [c]ross-[d]efendant[] . . . to disrupt [Newport Capital II’s] economic relationships with the [c]ollection [a]gencies, including PMGI, and with the intent to disrupt the probability of future economic benefit for [c]ross-[c]omplainants.”

*Thirteenth Cause of Action-Racketeering*

Paragraph 126 states, “The acts of [c]ross-[d]efendant[] . . . were part of an enterprise . . . comprised of [c]ross-[d]efendant[] . . . acting as an associated group of individuals and/or under the auspices of legitimate businesses, whose purpose was to fraudulently elicit a title interest in [Newport Capital II] and/or economic funds belonging to [c]ross-[c]omplainants . . . .”

As with the defendant in *Baharian-Mehr*, Rahavi “cherry-picked” allegations from Honig’s cross-complaint concerning his privileged communications with third parties to establish the causes of action arise from his protected activity. Similar to *Baharian-Mehr* and *Episcopal Church*, these allegations “do not constitute the ‘overall thrust’ of the complaint[.]” The thrust or gravamen of Honig’s cross-complaint is ownership of Newport Capital II. The cross-complaint includes numerous references to specific allegations concerning Rahavi using public documents to claim an ownership interest in Newport Capital II and Rahavi forging the Newport Capital II bank signature card. The cross-complaint includes numerous references to specific allegations regarding Rahavi pursuing debt portfolios for his own interest without first advising Honig of the debt portfolio. The gravamen of Honig’s complaint is not Rahavi’s communications with third parties harmed him but that Rahavi’s attempt to claim an ownership interest in Newport Capital II and stealing of corporate opportunities harmed him. Like the courts in *Baharian-Mehr* and *Episcopal Church*, although protected activity may lurk in the

background of Honig's cross-complaint, the mention of protected activity is only incidental to the business dispute based on nonprotected activity. Therefore, the trial court properly denied Rahavi's special motion to strike.

### *C. Attorney Fees & Sanctions*

Rahavi contends the trial court erred in awarding attorney fees because the court failed to make the proper factual findings to justify the award. Not so.

Section 425.16, subdivision (c)(1), states: "If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion . . . ." We review the trial court's ruling for an abuse of discretion. (*Baharian-Mehr, supra*, 189 Cal.App.4th at p. 275.)

At the hearing, the trial court indicated that the matter before him was purely a business dispute. The court stressed the arguably protected activity was incidental, "underline incidental." Again, *Baharian-Mehr, supra*, 189 Cal.App.4th 265, is instructive. In that case, the Court of Appeal affirmed the trial court's award of attorney fees to plaintiff. The court characterized the special motion to strike as "one of the weakest anti-SLAPP motions this court has reviewed in some time." The court reasoned, "Given the continuous flow of unambiguous case law in the past decade, any reasonable attorney should be aware that a business dispute that simply mentions incidental protected activity is not subject to the anti-SLAPP statute." (*Id.* at p. 275.)

Here, the trial court did not abuse its discretion in awarding Honig attorney fees. The court characterized the dispute before him as purely a business dispute. Although the court did not expressly state Rahavi's motion was frivolous, the court's statement any protected activity was incidental and his warning the attorney fees could be higher was an implicit finding Rahavi's special motion to strike was frivolous. Thus, the court did make factual findings supporting its attorney fees award.

DISPOSITION

The order is affirmed. Respondents are awarded their costs on appeal.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

BEDSWORTH, J.