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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MOHAMMED HAIDER et al.,

Plaintiffs and Appellants,

v.

STEVEN SPEIER et al.,

Defendants and Respondents.

G046200

(Super. Ct. No. 30-2011-00496128)

O P I N I O N

Appeal from an order of the Superior Court of Orange County,
David R. Chaffee, Judge. Affirmed. Motion to augment record on appeal. Granted in
part and denied in part.

Mohammed Haider and Mary Haider, in pro. per., for Plaintiffs and
Appellants.

Spach, Capaldi & Waggaman, Madison S. Spach, Jr., and
Thomas E. Walling for Defendants and Respondents.

* * *

INTRODUCTION

Mohammed Haider and Mary Haider (the Haiders) sued Steven Speier, Speier's accounting firm, Squar, Milner, Peterson, Miranda & Williamson, LLP (Squar Milner), and Jack Akmakjian and Christina Akmakjian (the Akmakjians) for fraud and conspiracy to commit fraud. In an earlier action to partition a piece of real property owned by the Haiders and the Akmakjians, Speier had been appointed as a referee by the trial court. He had also undertaken certain acts as a receiver; although Speier was never formally appointed as a receiver, all of his actions were later approved by the trial court.

In the current case, the Haiders alleged that Speier, Squar Milner, and the Akmakjians conspired "to rob the [Haiders] from their fair share of revenue from the proceeds of the sale of the property entrusted to Mr. Speier by the Superior Court of California in Riverside County as court receiver, and the net income from rent proceeds of said property." Speier and Squar Milner filed a motion to strike the complaint pursuant to Code of Civil Procedure section 425.16, commonly referred to as the anti-SLAPP (strategic lawsuit against public participation) statute (the anti-SLAPP motion). (All further statutory references are to the Code of Civil Procedure, unless otherwise specified.) The trial court granted the anti-SLAPP motion, and struck the Haiders' complaint; the Haiders appeal.

We conclude (1) Speier and Squar Milner met their burden of demonstrating the acts underlying the complaint arose from protected activity undertaken solely within the course of Speier's performance of his duties under court orders; and (2) the Haiders failed to meet their burden of establishing a probability that they would prevail on the merits of their complaint. We therefore affirm.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The Haiders were parties to a partition action filed in the Riverside County Superior Court in 2004, involving a dispute over the ownership of real property purchased jointly by the Haiders and the Akmakjians (the Riverside action). In 2006,

Speier was appointed as a referee by the Riverside County Superior Court to assist the court in arranging for the sale of the property, among other things. In part III. of the Discussion, *post*, we explain the legal effect of Speier's performance of duties as both referee and receiver, and the approval of all his work by court order.

Over the Haiders' opposition, the Riverside County Superior Court granted a motion to approve the sale of the property. The Haiders filed an *ex parte* application, and later a noticed motion, seeking to invalidate the sale of the property and to terminate Speier's duties as referee, claiming fraud and bias on the part of Speier and Squar Milner; both were denied.

The Riverside County Superior Court granted a motion filed by Speier as referee to (1) approve his final accounting and proposed distribution to the parties, (2) approve his final compensation and reimbursement of costs, (3) authorize him to pay outstanding attorney fees and costs, and (4) discharge him as referee. The Haiders appealed the trial court's order. The Court of Appeal, Fourth Appellate District, Division Two, concluded that Speier's 50-50 allocation of costs between the Haiders and the Akmakjians was not supported by substantial evidence, and directed the trial court to modify the order approving Speier's final accounting to allocate 85 percent of the costs to the Akmakjians and 15 percent to the Haiders, in accordance with their respective ownership interests in the property. (*Akmakjian v. Haider* (Dec. 3, 2010, E050146) [nonpub. opn.]) The order approving Speier's final accounting was otherwise affirmed. (*Ibid.*) (The Haiders concede they received the money that was overpaid to the Akmakjians from the proceeds of the partition sale.)

In August 2011, the Haiders filed an action in the Orange County Superior Court against the Akmakjians, Speier, and Squar Milner, alleging fraud and conspiracy to commit fraud. The Haiders alleged defendants had engaged in a concerted attempt to rob the Haiders of money they were due through the fees and costs paid to the Akmakjians

during the pendency of the Riverside action, as well as irregularities in the sale of the property.

Speier and Squar Milner filed the anti-SLAPP motion. After a hearing, the trial court granted the anti-SLAPP motion, finding that Speier and Squar Milner had made a prima facie showing that the allegations of the Haiders' complaint fell within section 425.16, and the Haiders had failed to present any admissible evidence establishing a probability they would prevail at trial. The Haiders timely appealed.¹

DISCUSSION

I.

STANDARD OF REVIEW

We review the trial court's order granting the anti-SLAPP motion de novo. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325-326.) “We consider “the pleadings, and supporting and opposing affidavits . . . upon which the liability or defense is based.” [Citation.] However, we neither “weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and

¹ Speier and Squar Milner filed a motion to augment the record on appeal with the following documents: (1) reporter's transcript of the October 7, 2011 hearing on the anti-SLAPP motion; (2) civil case report for Riverside County Superior Court case No. RIC405998, *Akmakjian v. Haider*; (3) minute order for Riverside County Superior Court case No. RIC405998, *Akmakjian v. Haider*, dated September 7, 2006; (4) minute order for Riverside County Superior Court case No. RIC405998, *Akmakjian v. Haider*, dated September 8, 2009; and (5) request for judicial notice filed in *Haider v. Akmakjian*, Orange County Superior Court case No. 30-2011-00496128. The Haiders did not file any opposition to the motion to augment.

Exhibit 5 is a document filed in this case in the superior court, and it is proper to augment the record to include it; we therefore grant the motion to augment the record on appeal with exhibit 5. (Cal. Rules of Court, rule 8.155(a)(1)(A).) Exhibits 1 through 4 do not meet the requirements for augmentation, and we deny the motion to augment the record with exhibits 1 through 4. Although exhibit 1 is a copy of a reporter's transcript of the oral proceedings in this case, it is not certified, as required by California Rules of Court, rule 8.155(a)(1)(B).

However, on our own motion, we take judicial notice of exhibits 2 through 4, pursuant to Evidence Code sections 459, subdivision (a), and 452, subdivision (d).

evaluate the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law." [Citation.]' [Citation.]" (*Id.* at p. 326.)

"Section 425.16, subdivision (b)(1) requires the court to engage in a two-step process. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. The moving defendant's burden is to demonstrate that the act or acts of which the plaintiff complains were taken 'in furtherance of the [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. [Citation.] If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim. Under section 425.16, subdivision (b)(2), the trial court in making these determinations considers 'the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.'" (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.)

II.

DOES THE COMPLAINT ARISE FROM PROTECTED ACTIVITY?

A defendant can meet his or her burden of making a threshold showing that a cause of action arises from protected activity by demonstrating the acts underlying the plaintiff's cause of action fall within one of the categories of section 425.16, subdivision (e). (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.) Section 425.16, subdivision (e) provides, in relevant part, as follows: "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, [or] (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"

The claims in the Haiders' complaint against Speier and Squar Milner arose from Speier's actions in the Riverside action, by which the Haiders claimed Speier and Squar Milner defrauded them and conspired to defraud them. The Haiders alleged the fraud and conspiracy consisted of (1) an agreement between the Akmakjians and Speier to apportion the expenses from the sale of the property 50-50 rather than in accord with their respective ownerships interests; (2) an agreement among the Akmakjians, their attorneys, and Speier to inflate Speier's fees as referee; (3) Speier's claim for attorney fees for anything other than to defend him on the motion to terminate what the Haiders referred to in their papers as a receivership (as noted both *ante* and *post*, Speier was actually appointed as a referee, although he performed the duties of both a referee and a receiver, all subject to court approval); (4) the use of fraudulent billings in connection with Speier's management of the property, which defrauded the Haiders out of their fair share of income from the property; (5) fraudulent accountings in connection with the sale of the property, which defrauded the Haiders out of their fair share of the sales proceeds; and (6) the delay in conducting the auction for the sale of the property, which resulted in Speier and the Akmakjians obtaining more money from the property's income and Speier's billing in the interim, and in the Haiders losing the value of their equity in the property due to a downturn in overall property values, and in the Akmakjians' ability to purchase the property "on the cheap" at the auction.

The Haiders rely on *Kajima Engineering & Construction, Inc. v. City of Los Angeles* (2002) 95 Cal.App.4th 921 (*Kajima*) and *Blackburn v. Brady* (2004) 116 Cal.App.4th 670 (*Blackburn*), to support the argument that their complaint did not arise from protected activity of Speier and Squar Milner. However, we find those cases distinguishable. In *Kajima*, the appellate court concluded that although the act of filing a lawsuit is an exercise of the constitutional right to petition (*Kajima, supra*, 95 Cal.App.4th at p. 929), the city's cross-complaint was not protected activity subject to an anti-SLAPP motion because the cross-complaint was directed at Kajima's bidding and

contracting practices, not its petitioning activities (*id.* at p. 930). Similarly, in *Blackburn*, the court concluded the ministerial event of a sheriff’s sale did not concern a statement in a judicial proceeding or an issue under review in a judicial proceeding, and, therefore, a claim of fraud in the bidding at a sheriff’s sale was not protected activity under the anti-SLAPP statute. (*Blackburn, supra*, 116 Cal.App.4th at p. 677.)

The Haiders argue that the management of the property at issue in the Riverside action and the control of the funds generated by the sale of that property are “purely business-type events or transactions.” In the present case, however, the Haiders’ complaint is directed at those types of acts performed solely within the course of Speier’s court-approved work as the referee and/or receiver in the Riverside action. Accordingly, Speier’s work is protected activity covered by the anti-SLAPP statute.

III.

DID THE HAIDERS DEMONSTRATE A PROBABILITY OF PREVAILING ON THE MERITS?

Because Speier and Squar Milner established that the Haiders’ complaint arose from protected activity, the burden shifted to the Haiders to demonstrate a probability of prevailing on the merits. The Haiders failed to do so.

First, the acts alleged in the Haiders’ complaint occurred while Speier was acting as a court-appointed referee in the Riverside action. The doctrine of quasi-judicial immunity therefore acts as an absolute bar to the Haiders’ claims against Speier and Squar Milner, which alleged fraud and impropriety by Speier in the course of his work as referee. “The privilege of judicial immunity applies not only to judges, but to all persons who act in a judicial capacity, such as court commissioners and court-appointed referees performing subordinate judicial duties. [Citations.]” (*Regan v. Price* (2005) 131 Cal.App.4th 1491, 1495.) The strength and breadth of judicial immunity, once it attaches, is significant. “The concept of judicial immunity is long-standing and absolute, with its roots in English common law. It bars civil actions against judges for acts performed in the exercise of their judicial functions and it applies to all judicial

determinations, including those rendered in excess of the judge's jurisdiction [Citations.] The judge is immune unless 'he has acted in the clear absence of all jurisdiction. [Citations.]' [Citation.] Beyond doubt, the doctrine of 'civil immunity of the judiciary in the performance of judicial functions is deeply rooted in California law.' [Citations.]" (*Howard v. Drapkin* (1990) 222 Cal.App.3d 843, 851-852, fn. omitted.) In any event, in opposition to the anti-SLAPP motion, the Haiders failed to offer any admissible evidence supporting their claims of fraud and conspiracy to commit fraud.

The parties agree that while Speier was appointed as a referee by the trial court in the Riverside action, he also undertook actions as a receiver of property. The record before us shows that all of Speier's actions, whether as referee or as receiver, were approved by the trial court. The doctrine of judicial immunity covers "nonjudicial persons who fulfill quasi-judicial functions intimately related to the judicial process" (*Howard v. Drapkin, supra*, 222 Cal.App.3d at p. 857), including court-appointed receivers. (See *New Alaska Development Corp. v. Guetschow* (9th Cir. 1989) 869 F.2d 1298, 1302-1303, cited by *Howard v. Drapkin, supra*, at pp. 855-856.)

Second, the claims asserted by the Haiders are covered by the litigation privilege. "A privileged publication or broadcast is one made: [¶] . . . [¶] (b) In any . . . judicial proceeding" (Civ. Code, § 47, subd. (b)(2).) "[T]he privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212.) The Haiders' claims against Speier and Squar Milner arose out of Speier's actions as the court-appointed referee in the Riverside action. Any written or oral communications relating to Speier's performance of his duties as referee would be covered by the litigation privilege. (*Howard v. Drapkin, supra*, 222 Cal.App.3d at p. 850, fn. 2.) Although the litigation privilege would not cover

noncommunicative acts, the Haiders fail to argue that any part of the alleged conspiracy or fraud was undertaken other than by communicative acts.

The Haiders argue that Speier lost any quasi-judicial immunity, and that the litigation privilege ceased to apply when Speier failed to personally appear at the hearing on the motion to approve the final accounting. The problems with this argument are many. Factually, the Haiders fail to offer any support for their contentions that counsel was appointed solely for the purpose of representing Speier in connection with the Haiders' motion to cancel the sale of the property and dismiss Speier as the referee, and that Speier was not present at the hearing on the approval of the final accounting. The civil case report from the Riverside action references a motion for leave of the court to employ counsel by Speier, without noting any limitations on what counsel would be employed to do. The Haiders fail to cite any authority that Speier was required to be personally present at any hearing, whether or not counsel had been appointed, or why any failure to appear at a hearing could cause the doctrines of quasi-judicial immunity and the litigation privilege to become inapplicable.

The Haiders also argue Squar Milner is not entitled to any protection under the quasi-judicial immunity and litigation privilege doctrines, presumably because Speier, not his accounting firm, was named as the court's referee. The liability of Squar Milner as alleged in the Haiders' complaint was based solely on Speier's position as a partner of Squar Milner while he was serving as referee. Squar Milner was not alleged to have committed any action of fraud or conspiracy other than through Speier. Indeed, the only allegations in the complaint involving Squar Milner are the allegations that Speier was a partner of Squar Milner when he was appointed and served as referee. It is therefore necessary and appropriate to extend the protection of these doctrines to Squar Milner. The purpose for extending quasi-judicial immunity to those serving as court-appointed referees is to ensure that such roles will be filled by those who will act fairly and competently on behalf of the court. "Without such immunity, such persons will be

reluctant to accept court appointments or provide work product for the courts' use. Additionally, the threat of civil liability may affect the manner in which they perform their jobs. [Citation.]” (*Howard v. Drapkin, supra*, 222 Cal.App.3d at p. 857.) This policy would be eviscerated if the doctrines of quasi-judicial immunity and the litigation privilege did not extend to the accounting or law firms with whom the court-appointed referees are affiliated.

Speier and Squar Milner request an award of their reasonable attorney fees incurred on appeal. When a statute authorizes an award of attorney fees in the trial court, attorney fees are also recoverable on appeal, unless the statute says otherwise. (*Mendoza v. ADP Screening & Selection Services, Inc.* (2010) 182 Cal.App.4th 1644, 1659.) Section 425.16, subdivision (c) requires that the trial court award reasonable attorney fees to a prevailing defendant on an anti-SLAPP motion, and does not preclude recovery of attorney fees on appeal for a defendant who successfully defends an anti-SLAPP dismissal order. Therefore, Speier and Squar Milner are entitled to recover their reasonable attorney fees on appeal, as determined by the trial court.

DISPOSITION

The order is affirmed. Respondents to recover costs and attorney fees on appeal, in an amount to be determined by the trial court.

FYBEL, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.