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Case No. _____

SUPREME COURT OF CALIFORNIA

RAND RESOURCES, LLC, et al

Plaintiffs and Appellants,

v.

LEONARD BLOOM, et al

Defendants and Respondents.

PETITION FOR REVIEW

On Appeal From the California Court of Appeal for the State of California, County of Los Angeles, Case No. B264493, Division 1

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I. ISSUES PRESENTED FOR REVIEW

Review, by this Court, of the published opinion of the Second Appellate District below, is required because:

(1) Causes of action arising from an Exclusive Agency Agreement (an "EAA") to negotiate the designation and development of a National Football League ("NFL") stadium are a "public issue" or "an issue of public interest" subject to California's Anti-SLAPP statute, Code of Civil Procedure § 425.16 (e)(1).[1]

(2) Causes of action alleging statements made by public officials in connection with the EAA to allegedly negotiate the construction of an NFL stadium are "protected speech" within the meaning of the Anti-SLAPP statute.

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[1] In the context of this litigation, the EAA at issue here is the functional equivalent of the Exclusive Negotiating Agreement ("ENA") considered by the Fourth Appellate District in *Tuchscher Dev. Enters., Inc. v. S.D. Unified Port Dist.* (2003) 106 Cal. App. 4th 1219. Since, by the time of the EAA was executed and discussions surrounding the same occurred, all redevelopment agencies in the State of California had been abolished by statute. All the City of Carson could enter into with Richard Rand was an agreement to make him the City's exclusive agent for certain narrowly defined purposes of a possible NFL stadium.

II. WHY REVIEW SHOULD BE GRANTED

Review by this Court is required to "secure uniformity of decision" within the appellate districts of California, and to settle an important issue of law with respect to applicability of the anti-SLAPP statute. (Rules of Court, Rule 8.500, sub. (b)(1).)

The published opinion of the Second Appellate District in this case is ***directly at odds*** with the majority view of the Fourth Appellate District as articulated in *Tuchscher Dev. Enters., Inc. v. S.D. Unified Port Dist.* (2003) 106 Cal. App. 4th 1219. In *Tuchscher*, the court held that statements and writings of public officials made in connection with an ENA regarding a large development of bayfront property were protected by California's anti-SLAPP statute because the development of bayfront property was an "issue of public interest." (*Id.* at 1233.)

With respect to the pending petition for review, the Second Appellate District found that an EAA regarding the development of an NFL stadium was ***not*** an issue of public interest. (Slip Op., p. 14-15.) These conflicting public opinions cannot be reconciled and must be reviewed by this Court.

The opinion of Second Appellate District ***utterly fails*** to meaningful distinguish the facts of the pending petition from the facts in *Tuchscher*. Moreover, and as a further conflict in legal positions between sister appellate districts, the Second Appellate District erroneously found that

communications related to selecting the City's exclusive agent were ***not*** protected speech in connection with an issue of public interest. (Slip Op., p. 6-7.)

Review by this Court is, therefore, necessary to resolve this conflict in legal positions and analysis between the published opinion in this case and in the *Tuchscher* case so that uniformity of decision can be achieved. In addition, review by this Court is necessary to settle important issues of law regarding the scope of speech protected by the anti-SLAPP statute and the application of the anti-SLAPP statute to agreements to prepare for and develop projects of widespread public interest. Therefore, the City of Carson and James Dear respectfully request that this Court grant their joint Petition for Review.

III. INTRODUCTION AND SUMMARY OF CASE

This Petition for Review arises from an erroneous decision of the Second Appellate District reversing the granting of the anti-SLAPP motion brought by Petitioners, City of Carson ("City") and James Dear ("Dear", collectively with City, "Petitioners"), concerning the First Amended Complaint ("FAC") filed by Respondents, Rand Resources, LLC and Carson El Camino, LLC's (collectively, "Rand Resources").

A. Exclusive Agency Agreement

Richard Rand, owner of Rand Resources, LLC and Carson El Camino, LLC, "is a real estate developer with a track record of successfully developing properties all over the globe." (AA:I:2:24, 28)[2]. In 2008, Rand Resources and the City's now dissolved-redevelopment agency entered into an alleged exclusive negotiating agreement, whereby Rand Resources was provided with the exclusive right to negotiate a $100 million dollar mixed-use retail project on 91 acres of land in the City of Carson. (AA:I:2:28-29).

Multiple extensions were granted by the redevelopment agency, but the redevelopment agency was dissolved by an act of the California Legislature. (AA:I:2:29). Due to such dissolution, the City and Rand Resources allegedly entered into an Exclusive Agency Agreement ("EAA"). (AA:I:2:29, 43-48).[3]

Under the EAA, Rand Resources "would become the exclusive agent of the City for the purpose of 'coordinating and negotiating with the NFL for the designation and development of an NFL football stadium in the City'." (AA:I:2:29-30). This football stadium would involve a "new, state-of-the-art sports and entertainment complex within the City" where "one or

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[2] Citations are to Appellants' Appendix unless otherwise noted. Citations to the Appellants' Appendix are cited as AA:Volume:Tab:Page.

[3] Petitioners vigorously dispute these factual allegations and note that the lower court's recitation of "facts" it its opinion were based upon its obligation to accept as true, for purposes in ruling on the special motion to strike, Rand's allegations in his FAC. To be clear, those allegations are just that – none of the "facts" have been adjudicated as true or correct. In fact, they are neither true nor correct.

more National Football League ("NFL") franchises" would "play its home games." (AA:I:2:24). The football stadium would be located on a 91 acre parcel that was partially owned by Rand Resources. (AA:I:2:44). Rand Resources alleges that El Camino "is the assignee of Rand Resources with respect to its rights under the EAA." (AA:I:2:25).

B. Allegations Of Fraud Based On Protected Speech And Petitioning Activities.

Rand Resources filed the FAC, the first pleading naming the City or Dear as defendants. (AA:II:6:417). Rand Resources added the second, third, and fourth causes of action, which are based on alleged fraud by the City and Dear (only as to the fourth cause of action) in connection with the City and Dear's communications relating to whether the EAA should be extended. (AA:I:2:33). Rand Resources also named the City in the first cause of action for breach of contract, which is not at issue in this petition.[4]

Rand Resources alleges that Dear, Carson's then mayor, and other unidentified "City officials" held "clandestine meetings," "talk[-ed] by the phone or through text messages," and sent "confidential emails." (AA:I:2:31, 35-36, 37). The purpose of these communications were "to cause[] the City to breach its prior representations and agreement to extend the EAA." (AA:I:2:33). Even though Rand Resources asserts that Dear and the City should have disclosed such communications to Rand

[4] Petitioners' Special Anti-SLAPP Motion to Strike did not include the breach of contract cause of action, which is pending before the lower court.

Resources (AA:I:2:35-36), Rand Resources nowhere identifies what "duty" Dear or the City had to Rand Resources, what statute this duty is based on, or even allege that either had such a duty or plead facts to support that such a duty existed.

C. Petitioners' Special Anti-SLAPP Motion to Strike.

On April 8, 2015, Petitioners and Bloom Petitioners Leonard Bloom and U.S. Capital, LLC ("Bloom Petitioners") filed separate special motions to strike under California's anti-SLAPP statute, which were set for hearing on May 7, 2015. Petitioners' special motion to strike included all causes of action in the FAC naming the City or Dear except for the alleged breach of contract claim against the City.

On May 7, 2015, the lower court, after hearing oral argument from all parties, granted all of these special motions to strike in their entirety. The lower court correctly found that "an action for breach of an exclusive commercial development contract ["EDC"] with a public entity (containing causes of action for inducing breach of contract, intentional and negligent interference and Business and Professions Code section 17200) is subject to [the] Anti-SLAPP [statute] on the basis of rights of petition and free speech in connection with a public issue." (AA:IV:21:1095; see also *Tuchscher Dev. Enters., Inc. v. S.D. Unified Port District* (2003) 106 Cal.App.4th 1219.)

The lower court went onto explain that, under *Tuchscher*, communications involving the proposed development of such commercial property fall into the 'matter of public interest' portion of the [Anti-SLAPP] statute and, as such, they need not be made in connection with an issue under consideration or review by a legislative, executive, or judicial body." (AA:IV:21:1095-1096).

Having established that California's anti-SLAPP statute applies, the lower court next examined Rand Resources' claims of liability against Petitioners. The lower court found that, pursuant to Government Code § 818.8, the City has absolute immunity from any cause of action based on fraud. (AA:IV:21:1096). Further, the lower court found that, pursuant to Civil Code § 47, subdivision (b), the statements in this case were made in connection with a legislative proceeding because they were used in the City's decision to decline to extend the EAA. As such, all such statements were protected by Civil Code § 47, subdivision (b). (*Id.*)

The lower court also found that Dear was immune under Civil Code §§ 820.2 and 47, subdivision (a), which affords immunity for a public official's discharge of an official duty, including discretionary actions of such public official. The lower court dismissed Rand Resources' arguments that there is no showing that Dear was discharging a discretionary duty, finding that evidence was presented, including in Rand Resources' *own allegations*, that "necessarily lead to a determination that

Dear was discharging a discretionary duty: he was making the decision to extend (or not extend) the Exclusivity Agreement." (AA:IV:21:1098). Finally, the lower court found that under Government Code § 815.2, because Dear is immune, the City is similarly immune. (AA:IV:21:1098).

D. Court of Appeal Opinion

Rand Resources appealed to the Court of Appeals for the Second Appellate District. In a published decision, the Second Appellate District reversed on the grounds that "none of the challenged causes of action fall within the scope of the statute" without reaching the question of whether there was probability of prevailing on the merits on the part of Rand Resources. The Second Appellate District attempted to distinguished the allegations of the FAC from the holding of the *Tuchscher* Court, finding the EAA was *not* an issue of public interest.

In doing so, the Second Appellate District offered utterly no meaningful rationale or reason that the EAA alleged in Rand Resources' FAC differs from EDC in *Tuchscher* for purposes of the applicability of California anti-SLAPP statute. That failure now creates a conflict of opinion between two of the sister appellate districts in this State.

E. No Petition For Rehearing Before The Court Of Appeal

The Second Appellate District's decision became final on June 30, 2016. Petitioners did not file a petition for rehearing before the Second

Appellate District and a petition for rehearing is not required since the errors by the Court of Appeal are errors of law.

IV. ARGUMENT

A. Review Should Be Granted To Secure Uniformity Of Decision And To Settle An Important Issue Of Law With Respect To The Application Of The Anti-SLAPP Statute To Agreements to Prepare For and Develop Impactful Projects As Issues Of Public Interest

1. *The Public Interest In The Exclusive Agency Agreement*

The real estate development alleged in the FAC meets the "broad" standard that it is a public issue or issue of public interest. The anti-SLAPP statute encompasses "any other conduct ... in connection with a public issue or an issue of public interest." (Code Civ. Proc., § 425, subd. (e)(4).) "The definition of 'public interest' within the meaning of the Anti-SLAPP statute has been broadly construed to include ... private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental agency." (*Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 479.)

Developmental projects such as a discount mall "with the potential environmental effects such as increased traffic and impact[s] on natural drainage [are] clearly a matter of public interest." (*Ludwig v. Superior Court* (1995) 37 Cal.App.4th 8, 15; see also *Tuchscher Dev. Enters., Inc. v. S.D. Unified Port Dist., supra,* 106 Cal.App.4th at p. 1234 ["[C]ommercial

and residential development of a substantial parcel of bayfront property, with its potential environmental impacts, is plainly a matter of public interest."].)

Here, the FAC clearly acknowledges the scale and impact of the contemplated developmental project. The EAA allegedly assigned exclusive agency to Respondent Rand Resources "for the purpose of 'coordinating and negotiating with the NFL for the designation and development of an NFL football stadium in the City." (AA:I:2:29-30). This football stadium would involve a "new, state-of-the-art sports and entertainment complex within the City" where "one or more National Football League ("NFL") franchises" would "play its home games." (AA:I:2:24).

The impact of such a billion dollar plus project is one of great national interest, let alone one of public interest for a city the size of Carson with a population under 100,000, and would be unlike anything ever completed in the City. (AA:I:5:79). Indeed, such a project would not only significantly impact the economics, infrastructure, and culture of the City, but because most of the property once operated as a landfill, the potential environmental undertaking would be daunting. (AA:I:5:79-80). These impacts dwarf those of the discount mall discussed in *Ludwig*.

The Second Appellate District's assertion that the communications alleged in the FAC "did not concern bringing an NFL team to Carson" (Slip

Op., p. 14) is contradicted by the FAC. The FAC explicitly states that "[u]nder the EAA . . . [Rand Resources] would become the exclusive agent of the City for the purpose of 'coordinating and negotiating with the NFL . . . ." (AA:I:2:29-30). Moreover, the City's alleged fraud related to undermining the EAA to explore whether the Bloom Petitioners could take over the exclusivity arrangement and negotiate with the NFL.

The FAC alleges "City officials, including Mayor James Dear, began secretly meeting with Leonard Bloom . . . *regarding bringing the NFL to Carson.*" (AA:I:2:24-25 (emphasis added)). How the City could allegedly explore other agency options without actually bringing up the NFL is baffling. An EAA to develop a NFL stadium is a matter of public interest, and as such communication related to it concern a matter of public interest.

2. *The Second Appellate District's Opinion Conflicts With Well-Settled Case Law*

The lower court correctly found that "an action for breach of an exclusive commercial development contract with a public entity (containing causes of action for inducing breach of contract, intentional and negligent interference and Business and Professions Code § 17200) is subject to Anti-SLAPP on the basis of rights of petition and free speech in connection with a public issue." In support of its finding, the lower court relied on *Tuchscher Dev. Enters., Inc. v. S.D. Unified Port District, supra,* 106 Cal.App.4th at p. 1232-35. (AA:IV:21:1095).

Tuchscher involved,

> an exclusive negotiating agreement (the negotiating agreement) [between TDE and] the City of Chula Vista and Chula Vista Redevelopment Agency (collectively the City) under which the City and TDE would take preliminary steps and negotiate towards a development agreement for the creation of a mixed use real estate project (the project or Crystal Bay) on certain bayfront property within the City. The negotiating agreement contained an exclusivity clause providing that during the agreement's term, the City "agree[d] not to negotiate with any other person or entity regarding the acquisition and development of the Project.

Tuchscher Dev. Enters., Inc. v. S.D. Unified Port District, supra, 106 Cal.App.4th at p. 1227. After the "negotiating agreement deadline passed without TDE and the City reaching terms of a development agreement for Crystal Bay" TDE sued the City and a rival developer, alleging the City and the rival developer conspired to "deprive TDE of the benefits of the negotiating agreement" by "(1) communicating with the mayor and other agents and employees of the City of Chula Vista, and (2) facilitating communications and meetings between [the rival developer and a major landowner] and that Rand Resources' objective was to secure the rights to develop . . . the Crystal Bay project." (*Id.* at 1228.)

Similarly, Rand Resources alleges it obtained an Exclusive Agency Agreement "which made Rand Resources the City's exclusive agent for the purpose of bringing, among other things, an NFL franchise to the City. Under the EAA, no one other than Rand Resources (or its agents and assignees, such as El Camino) was permitted to represent the City in negotiations with the NFL." (AA:I:2:24). After the expiration of the EAA, Plaintiffs alleged the "City officials, including Mayor James Dear" had been "secretly meeting with Leonard Bloom, the managing director and Chief Executive Officer of U.S. Capital, LLC, regarding bringing the NFL to Carson." (AA:I:2:24). Rand alleges "Mr. Bloom and Mayor Dear met with NFL executives in Beverly Hills, held meetings at City offices and elsewhere to raise money to bring an NFL team to the City, [and] spoke with representatives of NFL teams . . . about relocating to Carson." (AA:I:2:24-25).

The Second Appellate District ***completely ignored the nearly identical factual patterns*** in *Tuchscher* and the pending petition regarding exclusive agreements to negotiate the development of major projects. Instead, in attempting to distinguish *Tuchscher* and *Ludwig*, the Second Appellate District found that, in contrast to the instant action, "both involved communications pertaining to an actual planned development, not the identity of the agent representing a party in negotiating matters that might lead to a development." (Slip Op., p. 14.)

"In addition, in *Tuchscher*, the plaintiff conceded that the development in controversy was an issue of public interest. . . . Here, there is no such concession and the subject of the FAC is not communications pertaining to the actual development of real estate, but who represented the City in luring an NFL team to move to the City—a condition precedent to development." (Slip Op., p. 14-15.)

First, *Tuchscher* does not simply rely on a "concession" of the parties regarding the public interest in an exclusive negotiating agreement regarding the development of bayfront properties. On the contrary, the *Tuchscher* opinion focuses on the environmental effects of and the public's interest in the proposed development:

> The declaration of TDE's president and chief executive officer contains statements demonstrating the Crystal Bay development was a matter of public concern, having broad effects on the community. He averred Chula Vista's mayor and Chula Vista staff encouraged TDE to pursue the development of a large-scale multi-use, resort-oriented, master-planned project on the mid-bayfront in Chula Vista; that the Chula Vista City Council approved the exclusive negotiating agreement with TDE after being publicly noticed and agendized on four separate occasions; and that, in planning the project, TDE conducted numerous public

> forums with government agencies, local community groups, and individuals, as well as organized meetings with various environmental and habitat organizations, including the United States Fish and Wildlife Service and the California Department of Fish and Game. The prospect of commercial and residential development of a substantial parcel of bayfront property, with its potential environmental impacts, is plainly a matter of public interest. (E.g., *Ludwig, supra*, 37 Cal.App.4th at p. 15 [development of a discount mall "with potential environmental effects such as increased traffic and impact[s] on natural drainage, was clearly a matter of public interest"].)

(*Tuchscher Dev. Enters., Inc. v. S.D. Unified Port District, supra,* 106 Cal.App.4th at p. 1233-34.) Similarly, here the FAC and the Declaration In Support of the City's Anti-SLAPP motion both emphasize the community interest in and the potential environmental effects of an NFL stadium in the City. (AA:I:2:23-44; AA:I:5:78-81).

Second, both the EDC in *Tuchscher* and the EAA here involve the identity of the individual negotiating the development of a large project. Pursuant to the terms of the EDC, "the City 'agree[d] not to negotiate with any other person or entity regarding the acquisition and development of the Project'." (*Tuchscher Dev. Enters., Inc. v. S.D. Unified Port District,*

supra, 106 Cal.App.4th at p. 1227.) Similarly, the EAA allegedly was an *agency* agreement through which Rand Resources was appointed the "sole and exclusive agent . . . for the purpose of: (a) coordinating and negotiating with the NFL . . . [and] (b) facilitating the execution of appropriate agreements between the NFL and the City documenting the designation and development of the Property as an NFL Football Stadium . . ." (AA:I:2:44). Both agreements, by their own terms, allegedly involved the identity of the negotiator of a large development. The alleged communications in each similarly involved the identity of the negotiator.

Finally, the EAA is not limited to the identity of the entity who is tasked with generating interest in the City, but rather is also related to the potential development of a specific parcel of property as an NFL stadium. (AA:I:2:24, 44). This is virtually identical to the exclusive agreement in *Tuchscher*, which involved the identity of the negotiator of a development agreement for the creation of a large mixed-use real estate project. It is clear that the EAA relates to an issue of public interest, namely the development of an NFL stadium.

The Second Appellate District decision in this case is at odds with the well-reasoned authority of *Tuchscher*. Review by the Supreme Court is necessary to settle the inconsistency.

B. Review Should Be Granted to Secure Uniformity Of Decision And To Settle An Important Issue Of Law With Respect To The Application Of The Anti-SLAPP Statute To Comments Made In the Discussion and Negotiation of Agreements Of Public Interest

1. *Alleged Comments Made By The City and Dear Were Protected Speech*

The gravamen of the fraud-based causes of action attacks are the communications between the City and Dear and Bloom Petitioners on the one hand, and between Dear and Rand Resources on the other. However, each of these communications was "made in connection with a public issue." (See Code Civ. Proc., § 425.16, subd. (b)(1).)

The legislative process of determining whether to renew the EAA was not collateral to the allegedly improper communications, it was the very purpose of the alleged communications. Rand Resources acknowledges that the EAA was the subject of legislative deliberation; after all, Rand Resources requested from the City Council to extend the EAA, and Rand Resources complains the City Council did not extend it. (AA:I:2:32-33, 35).

Rand contends that the City engaged in communications with Bloom Petitioners about whether they could take over as agents once the EAA expired. (AA:I:2:31). Even if the City was allegedly prohibited from actually engaging another agent to seek out an NFL stadium deal during the EAA term, nothing in the EAA prevented the City from communicating

with others regarding possible future alternatives to the EAA once the EAA expired. (AA:I:2:43-49). This suit thus is tantamount to an attempt to freeze the City's right to explore these alternatives to fully inform itself prior to a very important decision about who should be the City's NFL agent after the EAA expires.

Accordingly, the alleged wrongful communications were a necessary and essential part of the legislative process, activity that is protected under the anti-SLAPP statute. (See *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1115 [observing that communications preparatory to or in anticipation of official proceedings are protected].)

Further, the FAC involves alleged conduct "made in connection with an issue under consideration or review by a legislative ... or any other official proceeding authorized by law." (Code Civ. Proc., § 425, subd. (e)(2).) The FAC concedes that the EAA and the project as a whole were the subject of multiple legislative and other official proceedings. The exclusive negotiating agreement that was the alleged predecessor to the EAA was entered into between the City's redevelopment agency and Respondent Rand Resources. (AA:I:2:28-29). Multiple extensions were granted by the redevelopment agency. (AA:I:2:29).

The EAA itself was entered into by City Council. (AA:I:2:29, 34). Most importantly, the City's Economic Development Commission reviewed and voted on whether to extend the EAA (AA:I:2:32), and the

City voted on whether to extend the EAA. (AA:I:2:32-33, 35). Given each of these circumstances, the property, agreement, and potential development at issue were all issues "under consideration or review by a legislative ... or ... other official proceeding," and thus properly encompassed by the Anti-SLAPP statute. (See Code Civ. Proc., § 425, subd. (e)(2).)

2. *The Second Appellate District's Opinion Conflicts With Well-Settled Case Law*

The Second Appellate District summarily dismissed the communications alleged in the FAC as not falling within the scope of the Anti-SLAPP statute as follows:

- Regarding the allegations in the Second Cause of Action, the Second Appellate District found that "the particular communications alleged in the [Second] cause of action, i.e., the false representation that the EAA would be renewed, Dear's [alleged] false denial about knowing Bloom, and communications entailed in meetings between the defendants were not made in connection with whether the EAA would be renewed or replaced with some agreement with the Bloom defendants. Indeed, Wynder's [alleged] false representation that the EAA would be renewed was made before the EAA even went into effect." (Slip Op., p. 15.)

- Regarding the allegations in the Third Cause of Action, the Second Appellate District found that "[t]he alleged wrongful conduct in plaintiffs' promissory fraud cause of action is Wynder's [alleged] false representation regarding renewal of the EAA, made in August of 2012, before the City and Rand Resources entered into the EAA . . . for the reasons previously stated, the statement does not fall within the scope of section 425.16, subdivisions (e)(2) or (e)(4)." (Slip Op., p. 16.)
- Regarding the allegations in the Fourth Cause of Action, the Second Appellate District found that "[t]he gravamen of the fourth cause of action with respect to the City is, as with the second and third cause of action, the City's violation of the terms of the EAA by allowing someone other than Rand Resources to act as its agent with respect to efforts to bring an NFL franchise to the City and the manner in which the City conducted itself in relation to the business transaction between it and Rand Resources, not the City's exercise of free speech or petitioning activity. . . . As to Dear, his [alleged] statement that he did not know Bloom was not a matter of public interest and did not constitute free speech or

petitioning activity protected by section 425.16." (Slip Op., p. 16.)

The alleged speech in *Tuchscher* is nearly identical to that recited by the Second Appellate District in its published opinion. In *Tuchscher*, the plaintiff-developer sued a city, public entity and its then-commissioner, and a rival developer, contending that the defendant public officials and rival developer interfered with the developer's exclusive negotiating agreement relating to the commercial development of certain bayfront property. (106 Cal.App.4th at p. 1227-28.) This interference took place by means of communications with other public officials and the rival developer, such as "closed door meetings, telephone calls and emails" designed to take away the exclusivity rights from the plaintiff-developer to the rival developer. (*Id.* at p. 1228.)

> The gist of [the plaintiff's] complaint was that respondents conspired with [the rival developer] to deprive [the plaintiff-developer] of the benefits of the negotiating agreement by disrupting the City's staff from negotiating the development agreement and inducing the City to cease negotiations. [The plaintiff-developer] alleged respondents furthered conspired by (1) communicating with the mayor and other agents and employees of the City ..., and (2) facilitating communications and meetings between [the rival developer] and a [city]

> representative, and that respondents' objective was to secure the rights to develop both the ... project and [the respondents'] own commercial property....

(*Id.*)

Under these circumstances, the alleged fact that the defendants ceased negotiations with a particular developer and sought advice from a rival developer was protected action under the anti-SLAPP statute. (*Id.* at pp. 1228, 1233-34.)

The parallels between the facts alleged *Tuchscher* and the facts alleged by Rand are striking. In both cases an unhappy developer with exclusive agreements (one an ENA and the other an EAA – a distinction without a difference) sues both a city and a rival developer for communications relating to negotiations of whether the current exclusivity arrangement should be extended. (AA:I:2:31). In both cases, the communications that were the target of a special motion to strike were alleged to have been private, behind closed doors, and involved both oral and written communications (in *Tuchscher* the communications alleged were "closed door meetings, telephone calls and emails'" in Rand the FAC alleged communications that consisted of "clandestine meetings," "talk(s) by the phone or through text messages," and "confidential emails.") (AA:I:2:31, 35-36, 37).